TEXAS REGISTER

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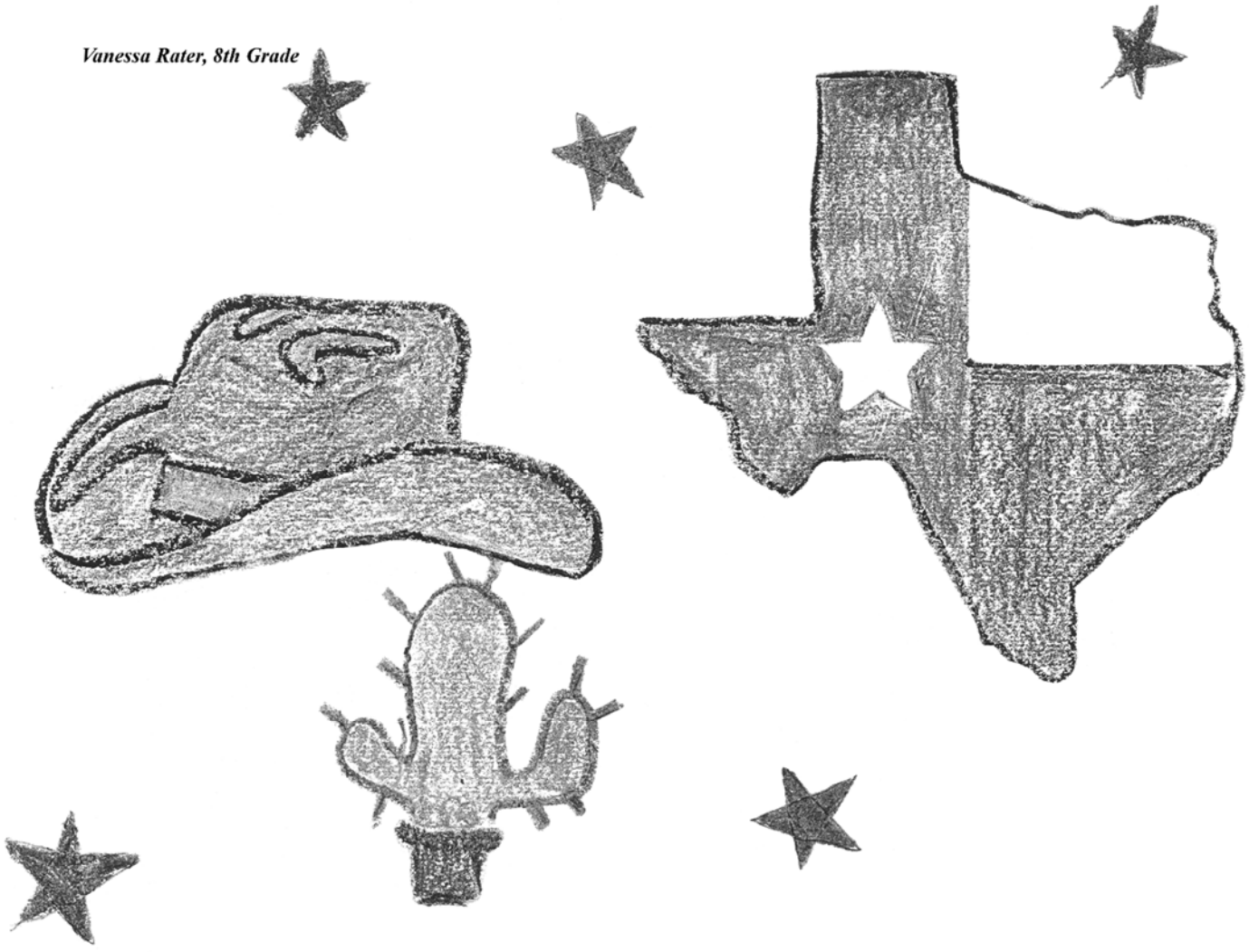

Vanessa Rater, 8th Grade

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

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

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

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

IN THIS ISSUE

ADOPTED RULES

RULE REVIEW

THE GOVERNOR

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

Appointments

Appointments for March 30, 2016

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Juana "Estela" Avery of Fredericksburg.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Jennifer C. Chiang of Sugar Land.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Alejandra De la Vega-Foster of El Paso. Ms. De la Vega-Foster will serve as vice-chairman of the commission.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Karen H. Harris of Lakehills.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Nancy Ann Hunt of Dallas.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Imelda Navarro of Laredo.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Jinous M. Rouhani of Austin.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Laura Koenig Young of Tyler.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Christine "Tina" Yturria Buford of Harlingen.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Starr-Renee "Starr" Corbin of Georgetown.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Deborah B. "Debbie" Gustafson of Wichita Falls.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Amy J. Henderson of Amarillo.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Karen D. Manning of Houston.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Rienke Radler of Fort Worth.

Pursuant to Executive Order GA 01, appointed to the Governor's Commission for Women, for a term to expire December 31, 2017, Catherine G. Susser of Corpus Christi. Ms. Susser will serve as chairman of the commission.

Appointments for March 31, 2016

Designating Steven J. "Steve" Austin of Amarillo as presiding officer of the State Board of Dental Examiners for a term at the pleasure of the Governor. Dr. Austin is replacing Rodolfo G. "Rudy" Ramos, Jr. of Houston as presiding officer.

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2017, Diane M. Garza of Brownsville (replacing Evangelia V. "Lia" Mote who resigned).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Renee S. Cornett of Austin (Ms. Cornett is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Bryan N. Henderson, II of Dallas (replacing Rodolfo G. "Rudy" Ramos, Jr. of Houston whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Jorge E. Quirch of Missouri City (replacing James Wesley Chancellor of Garden Ridge whose term expired).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Michael D. "David" Tillman of Aledo (Dr. Tillman is being reappointed).

Appointed to the State Board of Dental Examiners for a term to expire February 1, 2021, Richard D. "Rich" Villa of Austin (replacing Whitney Hyde of Midland whose term expired).

Appointments for April 1, 2016

Appointed as the public counsel for the Office of Public Insurance Counsel for a term to expire February 1, 2017, Deeia Beck of Austin (Ms. Beck is being reappointed).

Appointments for April 4, 2016

Appointed to the Injured Employee Public Counsel for a term to expire February 1, 2017, Jessica A. Corna of Austin (Ms. Corna is being reappointed).

Appointments for April 5, 2016

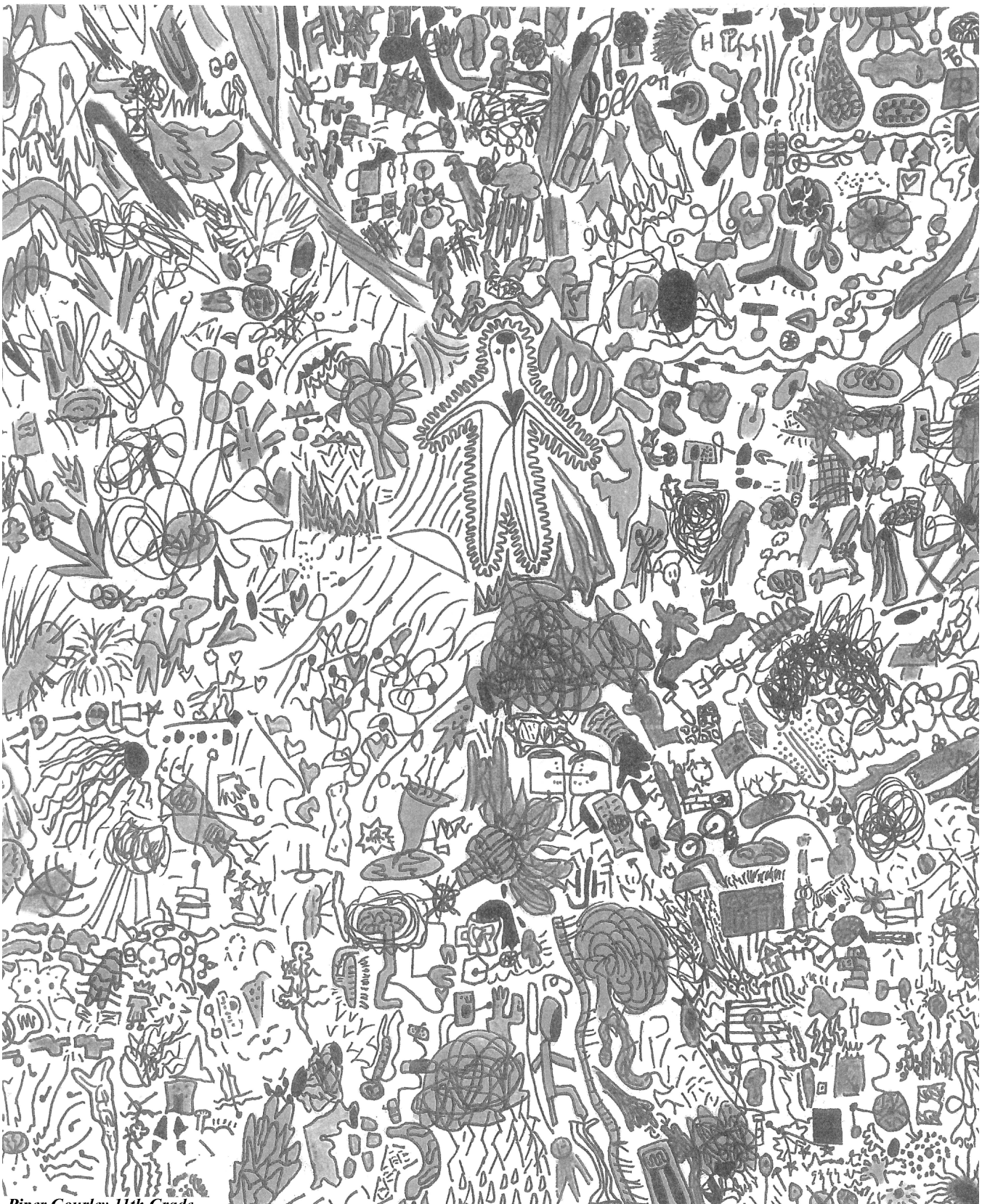
Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2021, James P. "Jim" Jeffers of Nacogdoches (reappointed).

Appointed to the Texas Municipal Retirement System Board of Trustees for a term to expire February 1, 2021, David A. Landis of Perryton (reappointed).

Greg Abbott, Governor

TRD-201601599

♦ ♦ ♦



Piper Gourley 11th Grade

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0104-KP

Requestors:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

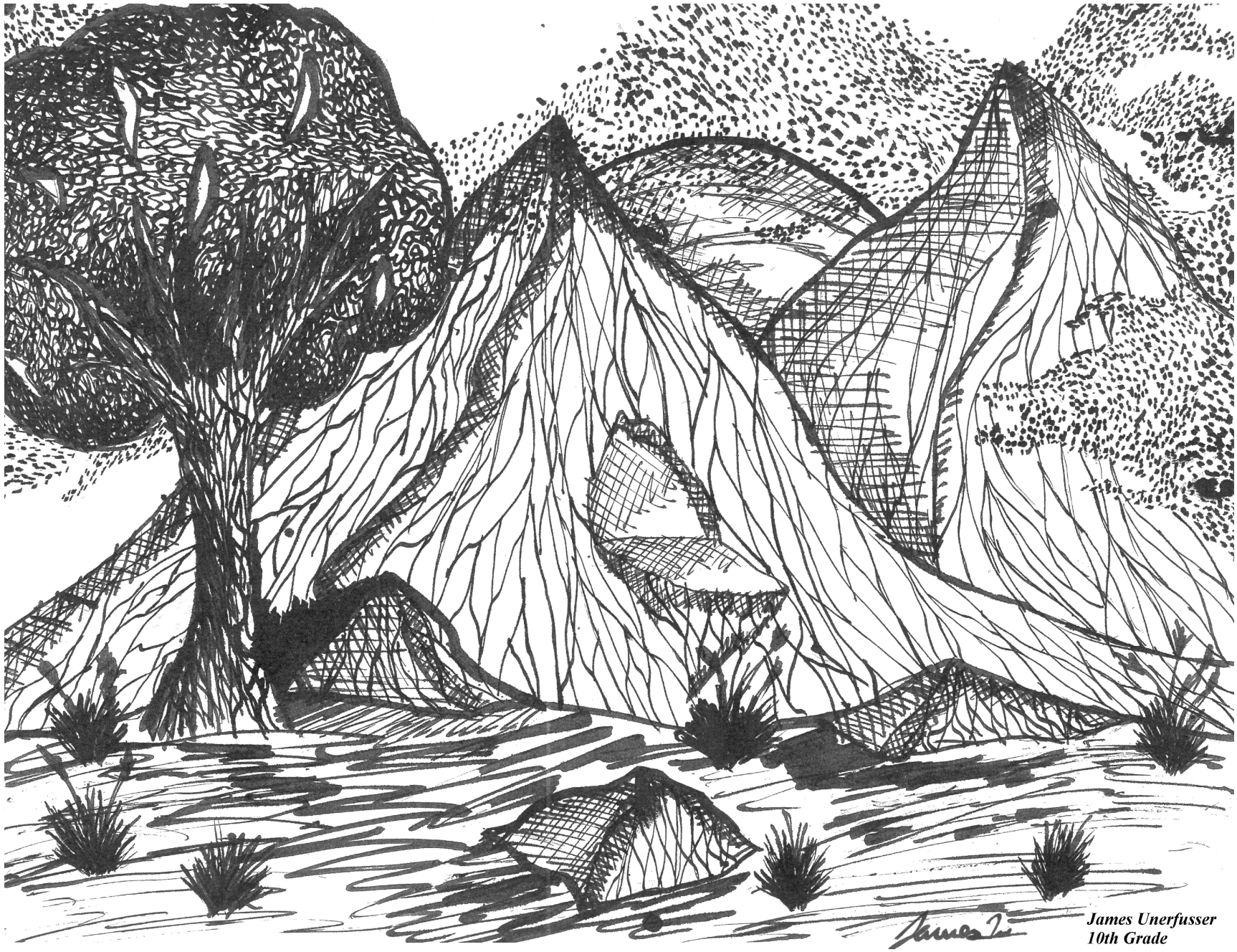
Re: Whether a member of a board of trustees of an independent school district may simultaneously serve as a member of a city planning and zoning commission (RQ-0104-KP)

Briefs requested by May 6, 2016

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

TRD-201601591
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 6, 2016

♦ ♦ ♦



James Unerfusser
10th Grade

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

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 111. ADMINISTRATION

Introduction and Background

The Texas Facilities Commission proposes amendments to §§111.24, 111.32, 111.40, and 111.41; the repeal of §111.30; and new §111.27 and §111.30. During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Texas Facilities Commission (Commission) has reviewed and considered Texas Administrative Code, Title 1, Chapter 111 for readoption, revision, or repeal in accordance with the Texas Government Code §2001.039 (West 2008). The Commission determined that the reasons for originally adopting Chapter 111 continue to exist. In addition, the Commission reviewed the rules to determine whether the rules were obsolete, reflected current legal and policy considerations, reflected current procedures and practices of the Commission, and were in compliance with the Texas Administrative Procedure Act, Texas Government Code Chapter 2001. The Commission determined that Chapter 111 requires amendment as well as a new rule that is required due to the passage of Senate Bill 20 by the 84th Legislature. Accordingly, the Commission proposes the following changes: in Subchapter B, amendment to §111.24 and new §111.27; in Subchapter C, the repeal of §111.30, a new §111.30, and amendment to §111.32; and in Subchapter D, amendments to §111.40 and §111.41.

Section by Section Summary

Section 111.24 concerning the training and education of Commission employees is amended to comply with Texas Government Code §656.048(b) which requires state agencies to adopt rules providing that before an administrator or employee of the agency may be reimbursed under Texas Government Code §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment. The Commission does not currently participate in tuition reimbursement, however, the rule amendment is proposed in accordance with the statutory requirement in case the agency were to ever receive funding to participate in the future.

Section 111.27, a new rule, is proposed in accordance with Texas Government Code §2261.253(c) which states that each state agency, by rule, shall establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. It also requires that staff immediately notify the agency's governing body of any serious issue or risk that is identified with respect to a contract monitored under this subsection.

The Commission proposes the repeal of the existing §111.30 as it was determined during the rule review that the rule does not reflect the current process of the Commission nor does it provide the information required by Texas Government Code §2152.060. New §111.30 is proposed under Texas Government Code §2152.060(a) to establish methods by which consumers, service recipients and persons contracting with the state may file complaints with the Commission.

Sections 111.32, Protests/Dispute Resolution/Hearing, 111.40, Fleet Management, and 111.41, Assignment and Use of Pooled Vehicles, are amended to make clerical changes that will enhance the clarity of the rules.

Fiscal Note

Harvey Hilderbran, Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Public Benefit/Cost Note

Mr. Hilderbran has also determined that for each year of the first five-year period the proposed rules are in effect the public benefit will be further clarification by updating the references to the Commission and correcting typographical errors, and ensuring consistency with governing statutes.

Mr. Hilderbran has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rules. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (West 2008 & Supp. 2015), are not required.

In addition, Mr. Hilderbran has determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (West 2008).

Takings Impact Assessment

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

Request for Comments

Interested persons may submit written comments on the proposed rules to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to *rulescom-*

ments@tfc.state.tx.us. For comments submitted electronically, please include "Proposed Administration Rules" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Ms. Kay Molina, General Counsel, at (512) 475-2400.

SUBCHAPTER B. GENERAL PROVISIONS

1 TAC §111.24, §111.27

Statutory Authority

The amendment and new rule are proposed under Texas Government Code §656.048, which requires a state agency to adopt rules related to training and education of its employees; Texas Government Code §2261.253(c), which requires a state agency to adopt rules related to enhanced contract monitoring; and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the proposed amendment and new rule are Texas Government Code §656.048 and §2261.253.

§111.24. Training and Education of Employees.

(a) With the approval of the Executive Director, the Commission may make available to its employees funds for training and education in accordance with the Employee Training Act, Texas Government Code §§656.041 - 656.049.

(b) In order to be eligible for agency supported training and education, the employee must demonstrate in writing, to the satisfaction of the Executive Director or designee, that the training or education is related to the duties or prospective duties of the employee. If the training or education is offered by an institution of higher education or private or independent institution of higher education, as defined by Texas Education Code §61.003, and is allowed under agency human resources policies:

(1) the agency may only pay the tuition expenses for a program course successfully completed by the employee at an accredited institution of higher education; and

(2) the Executive Director must authorize the tuition reimbursement payment.

(c) An employee who completes training and education to obtain a degree or certification for which the Commission has provided all or part of the required fees must agree in writing to fully repay the Commission any amounts paid for educational assistance if the employee voluntarily terminates employment with the agency within one year after the course or courses are completed.

(d) All materials received by an employee as part of agency-funded training and education remain the property of the Commission.

(e) Approval to participate in a training and education program, including an agency-sponsored training, seminar or conference, shall not in any way affect an employee's at-will status. The approval of a training and education program is not a guarantee or indication that approval will be granted for subsequent training and education programs. Approval to participate in a training and education program shall in no way constitute a guarantee or indication of continued employment, nor shall it constitute a guarantee or indication of future employment in a current or prospective position.

§111.27. Enhanced Contract Monitoring.

(a) Contracts for the purchase of goods or services that have a value in excess of $1 million will be identified for enhanced contract or performance monitoring.

(b) Contracts that are identified for enhanced contract or performance monitoring will be included in reports provided to the commission for commission open meetings.

(c) Contracts will be monitored in accordance with policies and procedures in the commission's contract management handbook.

(d) The commission will be notified, as appropriate, of any serious issue or risk that is identified with report to a contract monitored under this rule.

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601462
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-2400

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SUBCHAPTER C. COMPLAINTS AND DISPUTE RESOLUTION

1 TAC §111.30

Statutory Authority

The repeal is proposed under Texas Government Code §§2001.004(1), 2001.039(c), and 2152.060(a).

Cross Reference to Statute

The statutory provision affected by the proposed repeal is Texas Government Code §2152.060.

§111.30. Complaints.

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601463
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-2400

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1 TAC §111.30, §111.32

Statutory Authority

The new rule and amendment are proposed under Texas Government Code §2152.060(a), which requires the Commission to establish complaint procedures by rule; Texas Government Code §2155.076, which requires state agencies to promulgate by rule vendor protest procedures; and Texas Government Code

§2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the proposed new rule and amendment are Texas Government Code §2152.060 and §2155.076.

§111.30. Customer Service and Complaints.

The Commission will maintain an online customer service system. The system will be located on the Commission's Internet site at http://www.tfc.state.tx.us. The customer service system will provide a survey for actual consumers, service recipients or persons contracting with the Commission to provide customer service feedback. The customer service system will also provide a process for consumers, service recipients, persons contracting with the Commission and members of the public to submit a written complaint to the Commission.

(1) All initial complaints to the Commission must be submitted, in writing, through the customer service system. The Commission will investigate and respond to initial complaints submitted through the customer service system no later than the 10th business day from the date the complaint is received by the Commission. All initial complaints will be investigated by, and responded to, by the program area that is the subject of the complaint. Unless "no response necessary" has been requested by the complainant, the Commission will respond in writing to the initial complaint through the customer service system.

(2) Consumers, service recipients, persons contracting with the Commission or members of the public may file a subsequent complaint in writing to the address specified in the following subsection if the complainant believes the Commission's initial response through the customer service system does not resolve the complaint. Subsequent complaints will be investigated by the Executive Director or the Executive Director's designee. The Commission's response to a subsequent complaint will be made in writing to the complainant.

(3) Subsequent complaints may be sent by mail to the Texas Facilities Commission at P.O. Box 13047, Austin, Texas 78711-3047 or hand-delivered at 1711 San Jacinto Blvd., 4th Floor, Austin, Texas 78701. All subsequent complaints should be addressed to the Customer Service Representative.

(4) The Customer Service Representative upon notice of a subsequent complaint will confirm whether the complainant had utilized the customer service system to submit an initial complaint and received a response from the Commission in accordance with paragraph (1) of this section. If it is determined that the notice is an initial complaint, complainant will be directed to utilize the Commission's customer service system. If it is determined that the notice is a subsequent complaint that was properly submitted after utilizing the customer service system and receiving a response from the Commission, the complaint will be processed in accordance with paragraph (2) of this section.

§111.32. Protests/Dispute Resolution/Hearing.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Commission's Director of Procurement [~~Manager~~]. Such protests must be in writing and received by the Director of Procurement [~~in the Procurement Manager's office~~] within 10 working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Formal protests must conform to the requirements of this subsection and subsection (c) of this section, and shall be resolved in accordance with the procedure set forth in subsections (d) and (e) of this section. Copies of the protest must be mailed or delivered by the protesting party to the Commission [~~using agency~~] and other interested parties. For the purposes of this section, "interested parties" means all vendors who have submitted bids or proposals for the contract involved.

(b) In the event of a timely protest or appeal under this section, the state shall not proceed further with the solicitation or with the award of the contract unless the Executive Director, after consultation with the Director of Procurement [~~using agency and the Procurement Manager~~], makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(c) A formal protest 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;

(3) a precise statement of the relevant facts;

(4) an identification of the issue or issues to be resolved;

(5) argument and authorities in support of the protest; and

(6) a statement that copies of the protest have been mailed or delivered to the using agency and other identifiable interested parties.

(d) The Director of Procurement [~~Manager~~] shall have the authority, prior to appeal to the Executive Director of the Commission, to settle and resolve the dispute concerning the solicitation or award of a contract. The Director of Procurement [~~Manager~~] may solicit written responses to the protest from other interested parties.

(e) If the protest is not resolved by mutual agreement, the Director of Procurement [~~Manager~~] will issue a written determination on the protest.

(1) If the Director of Procurement [~~Manager~~] determines that no violation of rules or statutes has occurred, he shall so inform the protesting party[~~, the using agency,~~] and other interested parties by letter which sets forth the reasons for the determination.

(2) If the Director of Procurement [~~Manager~~] determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, he shall so inform the protesting party, the using agency, and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the Director of Procurement [~~Manager~~] determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, he shall so inform the protesting party[~~, the using agency,~~] and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(f) The Director of Procurement's [~~Procurement Manager's~~] determination on a protest may be appealed by the protesting party to the Executive Director of the Commission. An appeal of the Director of Procurement's [~~Procurement Manager's~~] determination must be in writing and must be received in the Executive Director's office no later than 10 working days after the date of the Director of Procurement's [~~Procurement Manager's~~] determination. The appeal shall be limited to review of the Director of Procurement's [~~Procurement Manager's~~] determination. Copies of the appeal must be mailed or delivered by the protesting party to the Commission [~~using agency~~] and other interested parties and must contain a certified statement that such copies have been provided.

(g) The Executive Director may confer with the Commission's General Counsel in his review of the matter appealed. The Executive Director may, in his discretion, refer the matter to the Commissioners for their consideration at a regularly scheduled open meeting or issue a written decision on the protest.

(h) When a protest has been appealed to the Executive Director under subsection (f) of this section and has been referred to the Commissioners by the Executive Director under subsection (g) of this section, the following requirements shall apply:

(1) Copies of the appeal and responses of interested parties, if any, shall be mailed to the Commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting are requested to notify the Commission's General Counsel at least 48 hours in advance of the open meeting.

(3) The Commissioners may consider oral presentations and written documents presented by staff and interested parties. The Commission Chair shall set the order and amount of time allowed for presentations.

(4) The Commissioners' determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting, and shall be final.

(i) Unless good cause for delay is shown or the Commission determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not filed timely will not be considered.

(j) A decision issued either by the Commissioners in open meeting, or in writing by the Executive Director, shall be the final administrative action of the Commission.

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601464
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-2400

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SUBCHAPTER D. VEHICLES

1 TAC §111.40, §111.41

Statutory Authority

The amendments are proposed under Texas Government Code §2171.1045, which requires state agencies to adopt rules addressing the assignment and use of agency vehicles, and Texas Government Code §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Cross Reference to Statute

The statutory provisions affected by the proposed new rule and amendment are Texas Government Code §2171.1045.

§111.40. Fleet Management.

In accordance with the plan developed by the Office of Vehicle Fleet Management under the direction of the State Council on Competitive Government, the Commission will adhere to all requirements detailed in the plan, including, but not limited to:

(1) The disposal of any vehicles declared excess through the routine review of vehicle use. The Commission will:

(A) follow the Commission's Surplus Property Division process for the disposal of vehicles; and

(B) submit proper documentation to certify successful disposal of vehicles declared excess.

(2) The adoption of all detailed policies, procedures and goals related to vehicle replacement, state fuel contracts, alternative fuel use, minimum use criteria, interagency agreements, and fleet consolidation.

(3) The submission of all fleet data required for vehicle inventory, fuel, mileage, repairs and preventive maintenance on an internet-based technology fleet data system.

(4) The review of internal fleet policies and procedures to determine if the fleet management "Best Practices," as determined by the Office of Vehicle Fleet Management under the direction of the State Council on Competitive Government, are appropriate and feasible for use by the fleet.

(5) The adherence to the fleet size and vehicle purchasing restrictions established by the plan adopted pursuant to Texas Government Code §2171.104 [~~on October 11, 2000~~], and any further fleet size reduction resulting from the ongoing review of vehicle use.

§111.41. Assignment and Use of Pooled Vehicles.

(a) Each vehicle in the Commission's vehicle fleet pool, with the exception of vehicles assigned to field employees, is assigned to the agency motor pool and is available for checkout, as needed. Some vehicles, because of mission critical status, may be permanently assigned to sub-pools within divisions and available only to employees within those divisions.

(b) Commission employees must present a valid Texas driver's license each time a pooled vehicle is checked out.

(c) Pooled vehicle assignments will be made by designated Commission personnel to ensure that all Commission vehicles are used and rotated to balance mileage and time usage among all pooled vehicles.

(d) Pooled vehicles assigned on a regular or daily basis to individual administrative or executive employees, require written documentation that the assignment is critical to the Commission's needs and mission of the agency. Documentation for all assigned Commission vehicles will be kept on file with designated Commission personnel.

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601465
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-2400

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CHAPTER 126. SURPLUS AND SALVAGE PROPERTY PROGRAMS
SUBCHAPTER A. STATE SURPLUS AND SALVAGE PROPERTY
1 TAC §§126.1, 126.4, 126.5

Introduction and Background

The Texas Facilities Commission files this notice to propose amendments to §§126.1, 126.4, and 126.5 of Title 1, Part 5, Chapter 126 of the Texas Administrative Code. During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Texas Facilities Commission ("Commission") reviewed and considered Texas Administrative Code, Title 1, Chapter 126 for readoption, revision, or repeal in accordance with the Texas Government Code §2001.039 (West 2008). The Commission determined that Texas Administrative Code, Title 1, §§126.1 - 126.5 are still necessary as these rules were promulgated to direct the transfer, sale, auction, or other disposition of State of Texas surplus and salvage property either by the state agency that owns the subject property or by the Commission, on behalf of the State of Texas under Texas Government Code, Chapter 2175. Revisions to these rules, however, are required to ensure consistency with governing statutes and to correct typographical errors. Through a concurrent notice of adopted rule review, the Commission readopted Texas Administrative Code, Title 1, Part 5, Chapter 126 with amendments. The revised rules are proposed pursuant to the Commission's rulemaking authority found in Texas Government Code, §§2175.061(b), (d); 2175.065(b); 2175.129(b); and 2175.186(b) (West 2008 & Supp. 2015).

Section by Section Summary

Proposed revisions to existing rules are required to reflect the agency's name change, to ensure consistency with governing statutes, and to correct typographical errors. Section 126.1 defines terms used in the subchapter addressing state surplus and salvage property. The proposed amendment will add definitions that will address changes made to §2175.1825 and §2175.241of the Texas Government Code. Section 126.4 establishes rules for the direct transfer, priority, reporting and other disposition of surplus and salvage property. The proposed amendment is required to conform to changes made to §2175.184 and §2175.541 of the Texas Government Code. Section 126.5 addresses disposition of surplus and salvage property to the public. The proposed amendment is required to address changes to §2174.190 and §2175.241 of the Texas Government Code.

Fiscal Note

Harvey Hilderbran, Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Public Benefit/Cost Note

Mr. Hilderbran has also determined that for each year of the first five-year period the proposed rules are in effect the public benefit will be further clarification by updating the references to the Commission and correcting typographical errors, and ensuring consistency with governing statutes.

Mr. Hilderbran has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rules. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (West 2008 & Supp. 2015), are not required.

In addition, Mr. Hilderbran has determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (West 2008).

Takings Impact Assessment

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

Request for Comments

Interested persons may submit written comments on the proposed rules to General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to *rulescomments@tfc.state.tx.us.* For comments submitted electronically, please include "Proposed Surplus and Salvage Property Programs" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposal to the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed new rules may be directed to Ms. Naomi Gonzalez, Assistant General Counsel, at (512) 463-3960.

Statutory Authority

The amended rules are proposed under Texas Government Code §§2175.1825(a), 2175.184(a), 2175.190(c), and 2175. 241(a), (b), (c), and (d) (West 2008 & Supp 2015).

Cross Reference to Statute

The statutory provisions affected by the proposed rules are those set forth in Chapter 2175 of the Texas Government Code.

§126.1. Definitions.

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

(1) Certificate of Acquisition--A form prescribed by the Commission that verifies the qualifications of an approved assistance organization or political subdivision as an entity entitled to receive state surplus or salvage property.

(2) Commission--The Texas Facilities Commission.

(3) Political subdivision--Each political subdivision of the state, including counties, municipalities, public school districts, volunteer fire departments.

(4) Local Governmental Entity--Each local government entity of the state, including counties, municipalities, and special purpose districts such as school districts, districts for fire and emergency services, including volunteer fire departments, utility and water districts, and health districts.

(5) [~~(4)~~] State agency--

(A) a department, commission, board, office, or other agency in the executive branch of state government created by the state constitution or a state statute;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the Texas Judicial Council; and

(C) the Civil Air Patrol, Texas Wing.[; and]

[(D) excluding those entities in Texas Government Code, Chapter 2175, Subchapter F.]

(6) Surplus Advertising Period--Designated time period in which surplus and salvage property is advertised on the Commission's website as available for direct transfer to state agencies, political subdivisions, and approved assistance organizations before the property is made available for sale to the general public. The advertising period must be a minimum of ten (10) business days.

§126.4. Direct Transfer, Priority, Reporting, and Other Disposition.

(a) Priority of claim.

(1) The first state agency, political subdivision or assistance organization that agrees to the established price before the expiration of the surplus advertising period [ten (10) business days] shall be entitled to the property; provided, however, a state agency shall have first priority over all other entities.

(2) In the event two competing and equivalent requests are received from parties of equal standing, the Commission shall award the property in the best interests of the state. Two or more requests shall be considered "competing and equivalent" for purposes of this section if each meets the established price on the same business day and within the surplus advertising period [ten (10) business day period following posting on the Comptroller's website].

(b) Reporting requirements. When a transfer of property is made to a political subdivision or assistance organization, the state agency disposing of the property must ensure the completion of a "Certificate of Acquisition" form. In completing the Certificate of Acquisition, the political subdivision or assistance organization certifies its continued qualification as an entity entitled to receive state surplus or salvage property, acknowledges receipt of property, and certifies that the property will be used for the purpose expressed by the organization at the time of application. The completed "Certificate of Acquisition" is to be retained by the state agency and a copy should be sent to the Commission within 5 business days of transfer. After the transfer, the state agency disposing of the property must document the proceeds from sale [transaction] into the Comptroller's State Property Accounting System.

(c) Direct Transfer Fees--State agencies shall coordinate with the Commission to determine the fee for transfer of property to Political subdivisions and assistance organization, State agencies are not authorized to transfer property to Political subdivisions and assistance organizations at no cost without the Commission's approval.

§126.5. Disposition of Surplus and Salvage Property to the Public by Competitive Bidding, Auction, or Direct Sale.

(a) Method of Sale. The Commission will consider the following criteria when determining the method of sale for surplus and salvage property:

(1) geographic location;

(2) cost of transportation if applicable;

(3) sales history for similar property;

(4) type of property; and

(5) condition of property.

(b) Disposition by direct sale to the public.

(1) Location and method of direct sales. Direct sales operations may be conducted at designated state facilities or warehouses approved by the Commission or by live or Internet auction.

(A) Access. The general public, political subdivision, and assistance organizations will have equal access.

(B) Payment. A purchaser under this section must pay for the surplus or salvage property by an approved method of payment at the time of sale and prior to obtaining possession or actual title to the property.

(C) Live auctions. Surplus or salvage property sold through the live auction method shall be accompanied by an auctioneer's paid receipt. The auctioneer's paid receipt will serve as the authorization of the Commission that the purchaser has in good faith complied with the conditions of the sale.

(D) Internet auctions. The Commission may contract with one or more commercial Internet auction sites for sale of state surplus or salvage property. Property on the Internet auction site shall be posted for at least ten (10) calendar days.

(2) Transfer of property. When a purchaser or successful bidder has paid the full amount due for the purchase of surplus or salvage property, the Commission or its designee shall notify both the successful bidder and the state agency holding the title of the surplus or salvage property and authorize the transfer of possession. In the case of vehicles or other items which require title transfer, it shall be the responsibility of the state agency holding title to complete the transfer of title to the purchaser or successful bidder.

(3) Forfeiture. In the event a purchaser or successful bidder pays for the property, but fails to remove the property within the time specified, the purchaser or successful bidder forfeits his rights to the property and any monies tendered, and ownership of the property reverts to the state.

(c) Direct Donations to Assistance Organizations and Local Governmental Entities.

(1) If the Commission determines that disposition by public sale is not in the State's best interest then the Commission may destroy the property as worthless salvage or donate it to an assistance organization or local government entity.

(2) A State agency may also make similar donations if the agency first notifies the Commission and provides sufficient information for the Commission to determine the donation is in the State's best interest. The State agency is responsible for documenting the donation and any proceeds in the Comptroller's State Property Accounting System.

(3) The Commission may charge the recipient a fee (not to exceed 10% of the item's market value) to cover the costs of the donation.

(d) Proceeds from Transfer or Sale.

(1) Returns on Small Value Items--The Commission will not provide participating State agencies with monetary returns on the transfer or sale of that agency's small value items. However, the Commission will allow the State agency to receive a return in the form of transfers of similar items at zero or reduced cost.

(2) Returns on Capital Assets--The Commission shall retain no more than 12% of the proceeds from the transfer or sale of capital assets in order to cover program expenses. The remainder will be returned to the owning agency. The Commission will notify a State agency of any sale of a capital asset so that the agency may document

the sale and proceed in the Comptroller's State Property Accounting System.

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601458
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 463-3960

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §351.2, concerning Petition for the Adoption of a Rule and proposes the repeal of §351.3, concerning Purpose, Task and Duration of Advisory Committees. HHSC also proposes new Subchapter B, concerning Advisory Committees, and new §§351.801, 351.803, 351.805, 351.807, 351.809, 351.811, 351.813, 351.815, 351.817, 351.819, 351.821, 351.823, 351.825, 351.827, 351.829, 351.831, 351.833, 351.835, and 351.837 within that subchapter. Concurrent with this proposal, HHSC adds Subchapter A, General, which will include the current existing rules within Chapter 351 (except §351.3, which is being repealed).

BACKGROUND AND JUSTIFICATION

Senate Bill (S.B.) 200 and S.B. 277, 84th Legislature, Regular Session, 2015, removed 38 advisory committees from statute and authorized the HHSC Executive Commissioner to reestablish committees in rule. As part of implementing this directive, the ongoing need for each advisory committee was evaluated and stakeholder feedback was requested. After the HHSC Executive Commissioner reviewed this information and made final decisions, HHSC published a list of committees that were either consolidated in some way, continued as they are currently, or discontinued. The list of committees that will be continued was published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7726). The proposed rules include a new rule for each committee, including information such as purpose, tasks, and membership.

The proposed amendments to §351.2, concerning Petition for the Adoption of a Rule, update outdated language in the rule, such as references to the Texas Board of Health.

SECTION-BY-SECTION SUMMARY

Proposed §351.2 updates outdated references to state agencies and state personnel.

Section 351.3 is repealed because it is being replaced by the rules in proposed new Subchapter B, concerning Advisory Committees.

Proposed §351.801 outlines information pertinent to all of the committees described in the remainder of the rules in this subchapter, including quorum, reporting requirements, and defined terms.

Proposed §351.803 describes the Medical Care Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.805 describes the State Medicaid Managed Care Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.807 describes the Behavioral Health Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.809 provides a cross reference to an existing rule related to the Drug Utilization Review Board.

Proposed §351.811 describes the Intellectual and Developmental Disability System Redesign Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.813 describes the Perinatal Advisory Council, including its statutory authority, purpose, tasks, and membership.

Proposed §351.815 describes the Policy Council for Children and Families, including its statutory authority, purpose, tasks, and membership.

Proposed §351.817 describes the Texas Council on Consumer Direction, including its statutory authority, purpose, tasks, and membership.

Proposed §351.819 describes the Behavioral Health Integration Advisory Committee, including its statutory authority, purpose, tasks, and membership

Proposed §351.821 describes the Value Based Payment and Quality Improvement Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.823 describes the e-Health Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.825 describes the Texas Brain Injury Advisory Council, including its statutory authority, purpose, tasks, and membership.

Proposed §351.827 describes the Palliative Care Interdisciplinary Advisory Council, including its statutory authority, purpose, tasks, and membership.

Proposed §351.829 describes the Promoting Independence Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.831 describes the Employment First Task Force, including its statutory authority, purpose, tasks, and membership.

Proposed §351.833 describes the STAR Kids Managed Care Advisory Committee, including its statutory authority, purpose, tasks, and membership.

Proposed §351.835 describes the Advisory Committee on Qualifications for Health Care Translators and Interpreters, including its statutory authority, purpose, tasks, and membership.

Proposed §351.837 describes the Texas Autism Council, including its statutory authority, purpose, tasks, and membership.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the proposed and repealed rules are in effect, there will be no effect on costs and revenues of state or local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as there is no requirement to alter business practices as a result of the proposed and repealed rules.

PUBLIC BENEFIT AND COSTS

Chris Adams, Deputy Executive Commissioner for Transformation, Policy, and Performance, has determined that for each year of the first five years the rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit will be clear, accurate information available to stakeholders and the general public regarding the advisory committees making policy recommendations to HHSC.

Ms. Rymal has also determined that there are no probable economic costs to persons who are required to comply with the proposed rules.

HHSC has determined that the proposed and repealed rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Amy Chandler, Program Specialist, by mail to P.O. Box 13247, MC H600, Austin, Texas 78711; or by e-mail to amy.chandler@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad authority to adopt rules to carry out HHSC's duties, and, with respect to advisory committees with jurisdiction over Medicaid matters, Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorize HHSC to administer the Medicaid program. More specifically, the amendment is proposed under Texas Government Code §531.012(c), which requires HHSC to adopt rules to govern its advisory committees, and Texas Government Code §2110.005 and §2110.008, which authorizes HHSC, as a state agency, to adopt rules to govern its advisory committees.

The proposed amendment implements Texas Government Code Chapters 531, 533, 534, and 2110, and Texas Human Resources Code Chapter 32. With respect to the Perinatal Advisory Council, the amendment implements Texas Human Resources Code §241.187. With respect to the Palliative Care Interdisciplinary Advisory Council, the amendment implements Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S. §2 (H.B. 1874). No other statutes, articles, or codes are affected by this proposal.

§351.2. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to provide procedures for any interested person to request that the Texas Health and Human Services Commission (HHSC) [~~the Texas Board of Health (board) to~~] adopt a rule.

(b) Form of the petition.

(1) The petition must be in writing.

(2) The petition must contain the following:

(A) the petitioner's name, address, and organization or affiliation, if any;

(B) a plain and brief description about why a rule or change to an existing rule is needed, required or desirable, including the public good to be served and any effect [~~affect~~] on those who would be required to comply with the rule;

(C) to the extent feasible to the petitioner, an estimated fiscal impact of the rule on state and local government, separately stated, for each of the first five years of its implementation; and, to the extent feasible to the petitioner, an estimated economic impact on persons required to comply with the rule for each of the first five years the rules are in effect;

(D) a statement of HHSC's [~~the board's~~] authority to adopt the proposed rule;

(E) if the petition proposes to amend an existing rule, the text of the existing rule, with proposed changes clearly indicated within the existing text; and

(F) if the petition is for a new rule, the proposed text of the new rule.

(c) The petition must be addressed to the HHSC Executive Commissioner [~~Commissioner of Health~~], and be mailed or hand delivered to HHSC, 4900 North Lamar, Austin, Texas 78751 [~~the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756~~].

(d) [~~(1)~~] The HHSC Executive Commissioner reviews [~~commissioner will review~~] the petition for compliance with the requirements in subsection (b) of this section. The petition may be refused if these requirements are not met.

(1) [~~(2)~~] If the requirements of subsection (b) are met, the HHSC Executive Commissioner consults with the appropriate subject matter experts within HHSC regarding the requested rules proposal [~~commissioner will bring the petition to the board~~].

(2) [~~(d)~~] The HHSC Executive Commissioner denies or accepts [~~board must deny or accept~~] the petition in whole or in part [~~and initiate the rulemaking process within 60 days from the date of submission of the petition by the petitioner~~].

(A) [(1)] If the HHSC Executive Commissioner [board] denies the petition, he or she notifies [the commissioner will notify] the petitioner in writing [of the board's action to deny] and state the reason(s) for the denial.

(B) [(2)] If the HHSC Executive Commissioner [board] accepts the petition, he or she refers [the commissioner will refer] the petition to the appropriate program to initiate the rulemaking process under Government Code, Chapter §2001, Subchapter B, within 60 days from the date of submission of the petition by the petitioner.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601553
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 424-6900

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1 TAC §351.3

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad authority to adopt rules to carry out HHSC's duties, and, with respect to advisory committees with jurisdiction over Medicaid matters, Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorize HHSC to administer the Medicaid program. More specifically, the repeal is proposed under Texas Government Code §531.012(c), which requires HHSC to adopt rules to govern its advisory committees, and Texas Government Code §2110.005 and §2110.008, which authorizes HHSC, as a state agency, to adopt rules to govern its advisory committees.

The proposed repeal implements Texas Government Code Chapters 531, 533, 534, and 2110, and Texas Human Resources Code Chapter 32. With respect to the Perinatal Advisory Council, the repeal implements Texas Human Resources Code §241.187. With respect to the Palliative Care Interdisciplinary Advisory Council, the repeal implements Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S. §2 (H.B. 1874). No other statutes, articles, or codes are affected by this proposal.

§351.3. Purpose, Task and Duration of Advisory Committees.

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

Filed with the Office of the Secretary of State on April 4, 2016.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER B. ADVISORY COMMITTEES

1 TAC §§351.801, 351.803, 351.805, 351.807, 351.809, 351.811, 351.813, 351.815, 351.817, 351.819, 351.821, 351.823, 351.825, 351.827, 351.829, 351.831, 351.833, 351.835, 351.837

STATUTORY AUTHORITY

The new rules are proposed under Texas Government Code §531.033, which provides the HHSC Executive Commissioner with broad authority to adopt rules to carry out HHSC's duties, and, with respect to advisory committees with jurisdiction over Medicaid matters, Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorize HHSC to administer the Medicaid program. More specifically, the new rules are proposed under Texas Government Code §531.012(c), which requires HHSC to adopt rules to govern its advisory committees, and Texas Government Code §2110.005 and §2110.008, which authorizes HHSC, as a state agency, to adopt rules to govern its advisory committees.

The proposed new rules implement Texas Government Code Chapters 531, 533, 534, and 2110, and Texas Human Resources Code Chapter 32. With respect to the Perinatal Advisory Council, the new rules implement Texas Human Resources Code §241.187. With respect to the Palliative Care Interdisciplinary Advisory Council, the new rules implement Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S. §2 (H.B. 1874). No other statutes, articles, or codes are affected by this proposal.

§351.801. Authority and General Provisions.

(a) Authority to establish advisory committees. In addition to specific statutory authority to establish particular advisory committees, the Health and Human Services Commission has authority under Texas Government Code §531.012 to establish and maintain advisory committees to consider issues and solicit public input across all major areas of the health and human services system.

(b) Applicability of Texas Government Code Chapter 2110. An advisory committee established under Texas Government Code §531.012 is subject to Texas Government Code Chapter 2110.

(c) Applicability of Texas Government Code Chapter 551. Unless otherwise expressly provided by statute or rule, an advisory committee established under this subchapter is subject to the Open Meetings Act, Texas Government Code Chapter 551, as if it were a governmental body.

(d) Quorum. Unless expressly provided otherwise, a majority of an advisory committee's voting members constitutes a quorum.

(e) General reporting requirement. In addition to reporting requirements set out in an advisory committee's section of this subchapter, an advisory committee established under Texas Government Code §531.012 must:

(1) report recommendations to the Executive Commissioner and the Health and Human Services Commission Executive Council; and

(2) submit a written report to the Texas Legislature of any policy recommendations made under paragraph (1) of this subsection.

(f) Geographic diversity generally. As necessary and appropriate, the members of an advisory committee established under Texas Government Code §531.012 will be appointed with a view to having committee members from diverse geographic areas of the state.

(g) Definitions. For purposes of this subchapter, the following terms are defined as follows:

(1) C.F.R.--Code of Federal Regulations.

(2) CHIP--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and Chapter 62 of the Texas Health and Safety Code.

(3) Executive Commissioner--The HHSC Executive Commissioner.

(4) Health and Human Services system--All state agencies and departments under and including the Health and Human Services Commission, including the Texas Department of State Health Services, Texas Department of Family and Protective Services, Texas Department of Aging and Disability Services, and Texas Department of Assistive and Rehabilitative Services.

(5) HHSC--The Texas Health and Human Services Commission or its designee.

(6) U.S.C.--United States Code.

§351.803. Medical Care Advisory Committee.

(a) Statutory authority. The Texas Human Resources Code §32.022 and 42 C.F.R. §431.12 require HHSC to establish the Medical Care Advisory Committee (MCAC).

(b) Purpose. The MCAC advises HHSC about health and medical care services. In particular, the MCAC provides input on:

(1) developing and maintaining the Medicaid program;

(2) immediate and long-range plans for reaching the Medicaid goal of providing access to high quality, comprehensive medical and health care services to medically indigent persons in the state; and

(3) possible changes in the eligibility-determination process to ensure that qualified applicants receive services.

(c) Tasks. The MCAC advises the Executive Commissioner and HHSC on:

(1) development and maintenance of the Medicaid program;

(2) long-range plans for providing access to high quality, comprehensive medical and health care services to medically indigent persons in the state;

(3) the process HHSC uses to determine eligibility; and

(4) all other issues as requested by the Executive Commissioner.

(d) Reporting requirements. The MCAC submits reports in accordance with statutory requirements and as requested by the Executive Commissioner.

(e) Abolition. The MCAC is required by federal regulations and will continue as long as the federal law that requires it remains in effect.

(f) Membership.

(1) The Executive Commissioner appoints the members of the MCAC in compliance with federal requirements. The appointments provide for a balanced representation of the general public, providers, consumers, and other persons, state agencies, or groups with knowledge of and interest in the MCAC's field of work.

(2) Each member serves at the will of the Executive Commissioner.

(g) Presiding officer.

(1) The MCAC selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

(h) Subcommittees. The Hospital Payment Advisory Committee exists as a standing subcommittee of the MCAC.

§351.805. State Medicaid Managed Care Advisory Committee.

(a) Statutory authority. Texas Government Code §533.041 requires the Executive Commissioner to establish the State Medicaid Managed Care Advisory Committee (SMMCAC).

(b) Purpose.

(1) The SMMCAC advises HHSC on the statewide operation of Medicaid managed care, including program design and benefits, systemic concerns from consumers and providers, efficiency and quality of services, contract requirements, provider network adequacy, trends in claims processing, and other issues as requested by the Executive Commissioner.

(2) The SMMCAC assists HHSC with Medicaid managed care issues.

(3) The SMMCAC disseminates Medicaid managed care best practice information as appropriate.

(c) Tasks. The SMMCAC makes recommendations to HHSC and performs other tasks consistent with its purpose.

(d) Abolition. Texas Government Code §531.044 exempts the SMMCAC from the abolition date set in Texas Government Code §2110.008.

(e) Membership. The SMMCAC consists of an odd number, but no more than 23, members.

(1) Each member is appointed by the Executive Commissioner.

(2) SMMCAC membership complies with Texas Government Code §533.041.

(f) Presiding officer.

(1) The Executive Commissioner appoints the presiding officer.

(2) The presiding officer serves at the will of the Executive Commissioner.

§351.807. Behavioral Health Advisory Committee.

(a) Statutory authority. HHSC has established the Behavioral Health Advisory Committee (BHAC) in accordance with the State's obligations under 42 U.S.C. §300x-3.

(b) Purpose. The BHAC makes recommendations to HHSC concerning the allocation and adequacy of mental health and substance use disorder services and program within Texas.

(c) Tasks. The BHAC considers and makes recommendations to the Executive Commissioner consistent with the committee's purpose.

(d) Reporting requirements. The BHAC submits a written report to the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Abolition. The BHAC is required by federal law and will continue as long as the federal law that requires it remains in effect.

(f) Membership.

(1) The BHAC consists of no more than 19 voting members.

(A) Each member is appointed by the Executive Commissioner.

(B) The BHAC consists of representatives of the following constituencies:

(i) two adult consumers of mental health and/or substance abuse services;

(ii) one youth/young adult consumer of mental health and/or substance abuse services;

(iii) two family representatives of consumers of mental health and/or substance abuse services, one of which must be a parent of a child with serious emotional disturbance;

(iv) one adult certified peer provider;

(v) one representative nominated by the Texas Council of Community Centers;

(vi) one representative nominated by the Association of Substance Abuse Programs;

(vii) two independent community behavioral health service providers;

(viii) two behavioral health advocates or representatives of behavioral health advocacy organizations;

(ix) one representative nominated by the Interagency Coordinating Group for faith and community-based organizations;

(x) one representative of a managed care organization that contracts with HHSC;

(xi) two representatives of local government; and

(xii) up to three additional members who have demonstrated an interest in mental and substance use disorders health systems and a working knowledge of mental and substance use disorder health issues.

(2) A member of the Statewide Behavioral Health Strategic Plan and Coordinated Expenditure Coordinating Council, representing state agencies providing behavioral health services or funding, will serve as a non-voting, ex officio member.

(3) Except as necessary to stagger terms, each member is appointed to serve a term of three years, with an appropriate number of terms expiring each August 31st.

(g) Presiding officers.

(1) The BHAC selects a presiding officer and an assistant presiding officer from among its members.

(2) Unless reelected, the presiding officer and assistant presiding officer each serve a term of one year.

(3) A member serves no more than two consecutive terms as presiding officer or as assistant presiding officer.

§351.809. Drug Utilization Review Board.

(a) Statutory authority. 42 C.F.R. §456.716 and Texas Government Code §531.0736 require HHSC to establish the Drug Utilization Review (DUR Board).

(b) Cross-reference. The DUR Board is governed by rules set out in §354.1941 of this title (relating to Drug Utilization Review Board).

§351.811. Intellectual and Developmental Disability System Redesign Advisory Committee.

(a) Statutory authority. Texas Government Code §534.053 establishes the Intellectual and Developmental Disability System Redesign Advisory Committee (IDD-SRAC).

(b) Purpose. IDD-SRAC advises HHSC and the Texas Department of Aging and Disability Services (DADS) on the implementation of the acute care services and long-term services and supports system redesign.

(c) Tasks. In addition to the tasks required by statute, the IDD-SRAC:

(1) provides recommendations for the continued implementation of and improvements to the acute care and long-term services and supports system; and

(2) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. The IDD-SRAC includes its recommendations in an annual report that HHSC prepares and submits to the Texas Legislature in compliance with Texas Government Code §534.054. The report is due on or before September 30th of 2018, 2019, and 2020.

(e) Abolition. The IDD-SRAC is abolished, and this section expires, on the one-year anniversary of the date HHSC completes the transition required by Texas Government Code §534.202 or January 1, 2026, whichever comes first.

(f) Membership.

(1) Each member of the IDD-SRAC is appointed jointly by the Executive Commissioner and the Commissioner of the Texas Department of Aging and Disability Services.

(2) Membership is allocated consistently with Texas Government Code §534.053.

(3) Members serve at the will of the Executive Commissioner and the Commissioner of the Texas Department of Aging and Disability Services.

(g) Presiding officer. The Executive Commissioner appoints a presiding officer.

§351.813. Perinatal Advisory Council.

(a) Statutory authority. Texas Health and Safety Code §241.187 establishes the Perinatal Advisory Council (PAC).

(b) Purpose. The PAC makes recommendations to HHSC on the designation of levels of care for neonatal or maternal care assigned to hospitals.

(c) Tasks. The PAC performs the following tasks:

(1) develops and recommends criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develops and recommends a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) makes recommendations for the division of the state into neonatal and maternal care regions;

(4) examines utilization trends relating to neonatal and maternal care;

(5) makes recommendations related to improving neonatal and maternal outcomes;

(6) assist in the designation of the centers of excellence for fetal diagnosis and therapy as required by Texas Health and Safety Code §32.072; and

(7) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. The PAC must submit a report not later than September 1, 2016, detailing the advisory council's determinations and recommendations to the Texas Department of State Health Services and the Executive Commissioner.

(e) Abolition. The PAC is abolished, and this section expires, on September 1, 2025.

(f) Membership.

(1) The PAC consists of 19 members.

(A) Each member is appointed by the Executive Commissioner.

(B) Membership is allocated consistently with Texas Health & Safety Code §241.187.

(2) Members of the PAC serve staggered three-year terms, with the terms of six members expiring each September 1st.

(3) A member may be reappointed.

(g) Presiding officer.

(1) The PAC selects a presiding officer from among its members beginning in 2017.

(2) Unless reelected, the presiding officer serves a term of one year.

§351.815. Policy Council for Children and Families.

(a) Statutory authority. The Policy Council for Children and Families (Policy Council) is established in accordance with Texas Human Resources Code §22.0235 and Texas Government Code §531.012.

(b) Purpose. The Policy Council works to improve the coordination, quality, efficiency, and outcomes of services provided to children with disabilities and their families through the state's health, education, and human services systems.

(c) Tasks. The Policy Council performs the following tasks:

(1) studies and makes recommendations to improve coordination between the state's health, education, and human services systems to ensure that children with disabilities and their families have access to high quality services;

(2) studies and makes recommendations to improve long-term services and supports, including community-based supports for children with special health and mental health care needs, as well as children with disabilities and their families receiving protective services from the state;

(3) studies and makes recommendations regarding emerging issues affecting the quality and availability of services available to children with disabilities and their families;

(4) studies and makes recommendations to better align resources with the service needs of children with disabilities and their families;

(5) makes recommendations regarding the implementation and improvement of the STAR Kids managed care program; and

(6) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reports.

(1) By December of each fiscal year, the Policy Council files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any committee recommendations to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By November 1st of each even-numbered year, the Policy Council submits a written report to the Executive Commissioner and Texas Legislature that:

(A) describes current gaps and barriers to the provision of services to children with disabilities and their families through the state's health and human services system; and

(B) provides recommendations consistent with the Policy Council's purposes.

(e) Date of abolition. The Policy Council is abolished, and this section expires, four years after the date of its creation, in compliance with Texas Government Code §2110.008(b).

(f) Membership.

(1) The Policy Council is composed of 24 members:

(A) six non-voting, ex officio members, one from each of the following state programs and agencies or their successors, as selected by the represented agency:

(i) HHSC STAR Kids managed care program expert;

(ii) HHSC long term services and supports expert;

(iii) Early Childhood Intervention Services;

(iv) Texas Council on Developmental Disabilities;

(v) Texas Department of Family and Protective Services; and

(vi) Texas Department of State Health Services;

(B) eleven voting members selected by the Executive Commissioner from families with a child under the age of 26 with a disability, including:

(i) at least one adolescent or young adult under the age of 26 with a disability receiving services from a health and human services system agency; and

(ii) at least one member of a family of a child with mental health care needs; and

(C) seven voting members, selected by the Executive Commissioner, one each to represent the following types of organizations or areas of expertise:

(i) a faith-based organization;

(ii) an organization that is an advocate for children with disabilities;

(iii) a physician providing services to children with complex needs;

(iv) an individual with expertise providing mental health services to children with disabilities;

(v) an organization providing services to children with disabilities and their families;

(vi) an organization providing community services; and

(vii) one at large position for an individual with expertise or experience relevant to the purposes and tasks of the Policy Council.

(2) In selecting members, the Executive Commissioner considers ethnic and minority representation and diverse disability representation.

(3) Members appointed under paragraph (1)(B) and (C) of this subsection serve staggered terms so that the terms of approximately half of these members expire on December 31st of each even-numbered year.

(4) Except as necessary to stagger terms, the term of office of each non-agency member, described in paragraph (1)(B) and (C) of this subsection, is four years.

(5) A member with an expiring term is eligible for reappointment.

(6) A member with an expiring term may continue to serve on the Policy Council until a new member is appointed.

(g) Officers. The Policy Council selects from among its members a presiding officer and an assistant presiding officer.

(1) The presiding and assistant presiding officers must be appointed family representatives.

(2) The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

(3) A presiding officer or assistant presiding officer remains in his or her position until the Policy Council selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.817. Texas Council on Consumer Direction.

(a) Statutory authority. The Texas Council on Consumer Direction (the Council) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Council advises HHSC on the development, implementation, expansion, and delivery of services through consumer direction in all programs offering long-term services and supports that enhances a consumer's ability to have freedom and exercise control and authority over the consumer's choices, regardless of age or disability.

(c) Tasks.

(1) The Council makes recommendations to HHSC to:

(A) expand the delivery of services through consumer direction to other programs serving persons with disabilities and elderly persons under Texas Government Code, Chapter 531, Subchapter B;

(B) expand the array of services delivered through consumer direction;

(C) increase the use of consumer direction models by consumers;

(D) optimize consumer choice of Financial Management Services Agencies (FMSAs);

(E) expand access to support advisors for consumers receiving long-term care services and supports through consumer direction;

(F) monitor and analyze research for best practices in self-determination, consumer direction, and training;

(G) provide guidance and support to consumer outreach efforts; and

(H) increase informed choices, opportunities, and supports as a means to lead self-determined lives through the use of consumer direction models.

(2) The Council performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. The Council files an annual written report to the Executive Commissioner no later than October 1st. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the Council, including staff and member orientation, training, strategic planning, retention, and evaluation efforts;

(4) a description of how the Council accomplished its tasks;

(5) a summary of the status of any rules that the Council recommended to HHSC;

(6) a description of activities the Council anticipates undertaking in the next fiscal year;

(7) recommended amendments to this section; and

(8) the costs related to the Council, including the cost of HHSC staff time spent supporting the Council's activities and the source of funds used to support the Council's activities.

(e) Abolition. The Council is abolished, and this section expires, four years after the date of its creation, in compliance with Texas Government Code §2110.008(b).

(f) Membership.

(1) The Council consists of no more than 17 members.

(A) Each member is appointed by the Executive Commissioner.

(B) Council membership must include:

(i) three members to serve as consumers or potential consumers of the array of services provided through consumer direction;

(ii) two members to serve as advocates for elderly persons who are consumers of the array of services provided to elderly persons through consumer direction;

(iii) two members to serve as advocates for persons with disabilities who are consumers of the array of services provided to persons with disabilities through consumer direction;

(iv) three members to represent financial management services agencies providing services through consumer direction;

(v) one member to represent a STAR+PLUS managed care organization;

(vi) one member to represent a STAR Kids managed care organization;

(vii) one member who serves as a mental health services advocate for consumers who receive consumer-directed services;

(viii) one member who represents a Local Intellectual and Developmental Disability Authority (LIDDA) for consumers who receive consumer-directed services;

(ix) one member with experience providing personal care attendants for consumers who receive consumer-directed services;

(x) one member to serve as an advocate for pediatric consumers or potential consumers of the array of services provided through consumer direction; and

(xi) one member to represent family members of pediatric consumers or potential consumers of the array of services provided through consumer direction.

(C) A majority of the members of the Council must be composed of consumers and advocates.

(D) Council membership must include, to the extent possible, individuals representing a range of ages and disabilities, including:

(i) individuals with an intellectual disability or related condition;

(ii) individuals with a physical disability;

(iii) individuals who are age 65 or older;

(iv) individuals with mental health needs; and

(v) individuals with children with high medical needs.

(E) Nonvoting members. Each nonvoting member is appointed by his or her respective agency as follows:

(i) two representatives with an expertise in consumer direction from HHSC or another state agency as considered necessary by the Executive Commissioner;

(ii) two representatives from the Texas Workforce Commission, one representing state unemployment and one representing employment services for individuals with disabilities;

(iii) one representative with expertise on managed care organizations from HHSC or another state agency as considered necessary by the Executive Commissioner;

(iv) one representative of the Texas Department of Family and Protective Services; and

(v) one representative with expertise in mental health from HHSC or another state agency as considered necessary by the Executive Commissioner.

(F) Additional nonvoting members may be added, as considered necessary by the Executive Commissioner and/or the Council.

(2) Except as necessary to stagger terms, each member is appointed to serve a term of four calendar years, including nonvoting members.

(g) Chairs.

(1) The Council selects a Chair and Vice-Chair from among its voting members.

(2) The Chair serves until December 31 of each even-numbered year. The Vice-Chair serves until December 31 of each odd-numbered year.

(3) A member serves no more than two consecutive terms as Chair or Vice-Chair.

§351.819. Behavioral Health Integration Advisory Committee.

(a) Statutory authority. HHSC established the Behavioral Health Integration Advisory Committee (BHIAC) in accordance with Texas Government Code §531.012(a).

(b) Purpose. The BHIAC makes recommendations to HHSC concerning the planning and development needs of a behavioral health services network. The network is developed by a managed care organization, contracted with HHSC, and includes public and private providers of behavioral health services and ensures adults with serious mental illness and children with serious emotional disturbance have access to a comprehensive array of services.

(c) Tasks. The BHIAC seeks input from the behavioral health community and makes recommendations consistent with its purpose to HHSC.

(d) Reporting requirements. The BHIAC prepares and submits reports in accordance with statute and at the request of the Executive Commissioner.

(e) Abolition. The BHIAC is abolished, and this section expires, four years after the date of the committee's creation, in compliance with Texas Government Code §2110.008(b).

(f) Membership.

(1) The BHIAC consists of no more than 24 members.

(2) Each member is appointed by the Executive Commissioner.

(3) Except as necessary to stagger terms, each member is appointed to serve a term of two years.

(g) Presiding officer.

(1) The BHIAC selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer services a term of one year.

§351.821. Value-Based Payment and Quality Improvement Advisory Committee.

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (Quality Committee) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Quality Committee provides a forum to promote public-private, multi-stakeholder collaboration in support of quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

(c) Tasks. The Quality Committee performs the following tasks:

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid/CHIP;

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid/CHIP value-based programs; and

(2) pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the Executive Commissioner or adopted into the work plan or bylaws of the committee.

(d) Reports.

(1) By December 31st of each fiscal year, the Quality Committee files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report:

(A) lists the meeting dates;

(B) provides the members' attendance records;

(C) briefly describes actions taken by the committee;

(D) describes how the committee has accomplished its tasks;

(E) summarizes the status of any rules that the committee recommended to HHSC;

(F) describes anticipated activities the committee will undertake in the next fiscal year;

(G) recommends amendments to this section, as needed; and

(H) identifies the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By December 1st of each even-numbered year, the committee submits a written report to the Executive Commissioner and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and

(B) provides recommendations consistent with the purposes of the Quality Committee.

(e) Date of abolition. The Quality Committee is abolished, and this section expires, four years after the date of its creation in compliance with Texas Government Code §2110.008(b).

(f) Membership.

(1) The Quality Committee is composed of 15 voting members appointed by the Executive Commissioner.

(A) HHSC solicits voting members from the following categories:

(i) Medicaid managed care organizations;

(ii) Regional Healthcare Partnerships;

(iii) hospitals;

(iv) physicians;

(v) nurses;

(vi) providers of long-term services and supports;

(vii) academic systems; and

(viii) members from other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) The final composition of the committee is determined by the Executive Commissioner.

(C) The committee may include nonvoting, ex officio agency representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each even-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Quality Committee selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31st of each odd-numbered year. The assistant presiding officer serves until December 31st of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the committee selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.823. e-Health Advisory Committee.

(a) Statutory authority. The e-Health Advisory Committee is established under Texas Government Code §531.012.

(b) Purpose. The committee advises the Executive Commissioner and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

(c) Tasks. The committee:

(1) advises HHS agencies on the development, implementation, and long-range plans for health care information technology and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

(2) advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

(3) advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

(4) makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC staff assigned to the committee; and

(5) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reports.

(1) By February of each year, the committee files an annual written report with the Executive Commissioner covering the meetings and activities in the immediate preceding calendar year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) The committee also files an annual written report with the Texas Legislature of any policy recommendations made to the Executive Commissioner.

(e) Date of abolition. The committee is abolished, and this section expires, four years after the date of its creation, in compliance with Texas Government Code §2110.008(b).

(f) Membership. The committee is composed of no more than 15 members appointed by the Executive Commissioner.

(1) The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services, including:

(A) at least two voting, ex officio representatives from HHSC;

(B) at least one voting, ex officio representative from the Texas Department of State Health Services;

(C) at least one representative from the Texas Medical Board;

(D) at least one representative from the Texas Board of Nursing;

(E) at least one representative from the Texas State Board of Pharmacy;

(F) at least one representative from the Statewide Health Coordinating Council;

(G) at least one representative of a managed care organization;

(H) at least one representative of the pharmaceutical industry;

(I) at least one representative of a health science center in Texas;

(J) at least one expert on telemedicine;

(K) at least one expert on home telemonitoring services;

(L) at least one representative of consumers of health services provided through telemedicine;

(M) at least one Medicaid provider or child health plan program provider;

(N) at least one representative from the Texas Health Services Authority established under Chapter 182, Texas Health and Safety Code;

(O) at least one representative of a local or regional health information exchange; and

(P) at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(2) When appointing members, the Executive Commissioner will consider the cultural, ethnic, and geographic diversity of Texas, including representation from at least 6 of the 11 Texas Health Service Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007 (www.dshs.state.tx.us/regions/state.shtm).

(3) Except as may be necessary to stagger terms, the term of office of each member is two years.

(A) Members are appointed for staggered terms so that the terms of nine members expire on December 31st of each even-numbered year.

(B) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(C) This paragraph does not apply to ex officio members, who serve at the pleasure of the Executive Commissioner.

(g) Officers. The committee selects from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer serves until July 1st of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year.

(2) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

§351.825. Texas Brain Injury Advisory Council.

(a) Statutory authority. The Texas Brain Injury Advisory Council (Texas BIAC) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Texas BIAC advises the Executive Commissioner and the HHSC Office of Acquired Brain Injury (OABI) on strategic planning, policy, rules, and services related to the prevention

of brain injury; rehabilitation; and the provision of long term services and supports for persons who have survived brain injuries to improve their quality of life and ability to function independently in the home and community.

(c) Tasks. The tasks of the Texas BIAC include:

(1) informing state leadership of the needs of persons who have survived a brain injury and their families regarding rehabilitation and the provision of long term services and supports to improve health and functioning that leads to achieving maximum independence in home and community living and participation;

(2) encouraging research into the causes and effects of brain injuries as well as promising and best practice approaches for prevention, early intervention, treatment and care of brain injuries and the provision of long term services and supports;

(3) recommending policies that facilitate the implementation of the most current promising and evidence-based practices for the care, rehabilitation, and the provision of long term services and supports to persons who have survived a brain injury;

(4) promoting brain injury awareness, education, and implementation of health promotion and prevention strategies across Texas; and

(5) facilitating the development of partnerships among diverse public and private provider and consumer stakeholder groups to develop and implement sustainable service and support strategies that meet the complex needs of persons who have survived a brain injury and those experiencing co-occurring conditions.

(d) Reports.

(1) The Texas BIAC files an annual written report with the Executive Commissioner.

(A) The report includes:

(i) a list of the meeting dates;

(ii) the members' attendance records;

(iii) a brief description of actions taken by the Texas BIAC;

(iv) a description of how the Texas BIAC accomplished its tasks;

(v) a summary of the status of any rules that the Texas BIAC recommended to HHSC;

(vi) a description of activities the Texas BIAC anticipates undertaking in the next fiscal year;

(vii) recommended amendments to this section; and

(viii) the costs related to the Texas BIAC, including the cost of HHSC staff time spent supporting the council's activities and the source of funds used to support the council's activities.

(B) The report covers the meetings and activities in the immediate preceding calendar year and is filed with the Executive Commissioner each February of the following calendar year.

(2) No later than December 1st of each even-numbered year, the Texas BIAC submits a report to the Governor, the Texas Legislature, and the Executive Commissioner regarding its findings and recommendations.

(e) Date of abolition. The Texas BIAC is abolished, and this section expires, four years after the date of the council's creation, in compliance with Texas Government Code §2110.008(b).

(f) Membership. The Texas BIAC is composed of 15 members appointed by the Executive Commissioner.

(1) The Texas BIAC includes:

(A) one representative from acute hospital trauma units;

(B) one representative from post-acute rehabilitation facilities;

(C) one representative of a long-term care facility that serves persons who have survived a brain injury;

(D) one healthcare practitioner/service provider who has specialized training/interest in the prevention of brain injuries and/or the care, treatment, and rehabilitation of persons who have survived a brain injury;

(E) one representative of an institution of higher education engaged in research that impacts persons who have survived a brain injury;

(F) five persons who have survived a brain injury representing diverse ethnic/cultural groups and geographic regions of Texas, with:

(i) at least one of these being a transition age youth (age 18-26); and

(ii) at least one of these being a person who has survived a traumatic brain injury;

(G) four family members actively involved in the care of loved ones who have sustained a brain injury; and

(H) one representative from the stroke committee of the Governor's EMS & Trauma Advisory Council or other stakeholder group with a focus on stroke.

(2) The OABI is committed to ensuring that membership of the Texas BIAC reflects the cultural, ethnic, and geographic diversity of Texas. To this purpose, membership will include representation from at least 6 of the 11 Texas Health Service Regions (www.dshs.state.tx.us/regions/state.shtm). Vacancies will be announced to subscribers on delivery.gov and posted on the OABI and Texas BIAC websites to facilitate access to all interested stakeholders. The experience, education, and geographical locations of applicants will be evaluated in making recommendations for appointment.

(3) Except as may be necessary to stagger terms, each member is appointed to serve a term of three years, with an appropriate number of terms expiring each December 31st.

(4) If a vacancy occurs, a person is appointed to serve the unexpired portion of that term.

(g) Officers. The Texas BIAC selects from its members the presiding officer and an assistant presiding officer, one of whom must be a public consumer member (a person who has survived a brain injury or a family member actively involved in the care of a loved one who has survived a brain injury).

(1) The presiding officer serves until July 1 of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year. Both the presiding officer and the assistant presiding officer may holdover until his or her replacement is selected.

(2) The presiding officer presides at all Texas BIAC meetings in which he or she is in attendance, calls meetings in accordance with this section, appoints committees of the council as necessary, and causes proper reports to be made to the Executive Commissioner. The presiding officer may serve as a voting, ex officio member of any committee of the council.

(3) The assistant presiding officer performs the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer serves until the Texas BIAC selects a new presiding officer.

(4) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

(5) The Texas BIAC may reference its officers by other terms, such as chairperson and vice-chairperson.

§351.827. Palliative Care Interdisciplinary Advisory Council.

(a) Statutory authority. The Palliative Care Interdisciplinary Advisory Council (Palliative Care Council or Council) is established in accordance with Texas Health and Safety Code Chapter 118, as adopted by Act of May 23, 2015, 84th Leg., R.S., §2 (H.B. 1874).

(b) Purpose. The Palliative Care Council assesses the availability of patient-centered and family-focused, interdisciplinary team-based palliative care in Texas for patients and families facing serious illness. The Council works to ensure that relevant, comprehensive, and accurate information and education about palliative care is available to the public, health care providers, and health care facilities. This includes information and education about complex symptom management, care planning, and coordination needed to address the physical, emotional, social, and spiritual suffering associated with serious illness.

(c) Tasks. The Palliative Care Council performs the following tasks:

(1) consults with and advises HHSC on matters related to the establishment, maintenance, operation, and outcome evaluation of the palliative care consumer and professional information and education program established under Texas Health and Safety Code §118.011;

(2) studies and makes recommendations to remove barriers to appropriate palliative care services for patients and families facing serious illness in Texas of any age and at any stage of illness; and

(3) pursues other deliverables consistent with its purpose as requested by the Executive Commissioner or adopted into the work plan or bylaws of the council.

(d) Reports.

(1) By December of each fiscal year, the Palliative Care Council files a written report with the Executive Commissioner that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section; and

(H) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) By October 1st of each even-numbered year, the Council submits a written report to the Executive Commissioner and the standing committees of the Texas senate and house with primary jurisdiction over health matters. The report:

(A) assesses the availability of palliative care in Texas for patients in the early stages of serious disease;

(B) analyzes barriers to greater access to palliative care;

(C) analyzes policies, practices, and protocols in Texas concerning patients' rights related to palliative care, including:

(i) whether a palliative care team member may introduce palliative care options to a patient without the consent of the patient's attending physician;

(ii) the practices and protocols for discussions between a palliative care team member and a patient on life-sustaining treatment or advance directives decisions; and

(iii) the practices and protocols on informed consent and disclosure requirements for palliative care services; and

(D) provides recommendations consistent with the purposes of the Palliative Care Council.

(e) Date of abolition. The Palliative Care Council is subject to Chapter 325, Texas Government Code. Unless continued in existence as provided by that chapter, the Palliative Care Council is abolished and this section expires September 1, 2019.

(f) Membership.

(1) The Palliative Care Council is composed of at least 15 voting members appointed by the Executive Commissioner.

(A) The Palliative Care Council must include:

(i) at least five physician members, including:

(I) two who are board certified in hospice and palliative care; and

(II) one who is board certified in pain management;

(ii) three palliative care practitioner members, including:

(I) two advanced practice registered nurses who are board-certified in hospice and palliative care; and

(II) one physician assistant who has experience providing palliative care;

(iii) four health care professional members, including:

(I) a nurse;

(II) a social worker;

(III) a pharmacist; and

(IV) a spiritual-care professional; and

(iv) at least three members:

(I) with experience as an advocate for patients and the patients' family caregivers;

(II) who are independent of a hospital or other health care facility; and

(III) at least one of whom represents an established patient advocacy organization.

(B) Health care professional members listed in subparagraph (A)(iii) of this paragraph must meet one or more of the following qualifications:

(i) experience providing palliative care to pediatric, youth, or adult populations;

(ii) expertise in palliative care delivery in an inpatient, outpatient, or community setting; or

(iii) expertise in interdisciplinary palliative care.

(C) The committee may include nonvoting agency, ex-officio representatives as determined by the Executive Commissioner.

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed to staggered terms so that the terms of approximately half the members expire on December 31st of each odd-numbered year.

(4) Except as necessary to stagger terms, the term of each voting member is four years.

(g) Officers. The Palliative Care Council selects from its members a presiding officer and an assistant presiding officer.

(1) The presiding officer serves until December 31 of each odd-numbered year. The assistant presiding officer serves until December 31 of each even-numbered year.

(2) The presiding officer and the assistant presiding officer remain in their positions until the Palliative Care Council selects a successor; however, the individual may not remain in office past the individual's membership term.

§351.829. Promoting Independence Advisory Committee.

(a) Statutory authority. Texas Government Code §531.02441 requires the Executive Commissioner to establish the Promoting Independence Advisory Committee (PIAC), which the statute refers to as the "Task Force on Ensuring Appropriate Care Settings for Persons with Disabilities."

(b) Purpose. The PIAC advises HHSC in the development of a comprehensive, effective working plan to ensure appropriate care settings for persons with disabilities.

(c) Tasks. The PIAC performs the following tasks:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. Not later than September 1 of each year, the PIAC submits a report to the Executive Commissioner on its findings and recommendations.

(e) Abolition. The PIAC is abolished, and this section expires, on September 1, 2017.

(f) Membership.

(1) The Executive Commissioner determines the number of members.

(A) Each member is appointed by the Executive Commissioner.

(B) The Executive Commissioner must appoint:

(i) representatives of appropriate health and human services agencies, including the Texas Department of State Health Services;

(ii) representatives of related work groups, including the Policy Council for Children and Families;

(iii) representatives of consumer and family advocacy groups; and

(iv) representatives of service providers for persons with disabilities.

(2) Each member serves at the will of the Executive Commissioner.

(g) Officers.

(1) The Executive Commissioner designates a member of the PIAC to serve as presiding officer.

(2) The members of the PIAC elect any other necessary officers.

§351.831. Employment First Task Force.

(a) Statutory authority. Texas Government Code §531.02448 requires the Executive Commissioner to establish the Employment First Task Force (EFTF).

(b) Purpose. The EFTF promotes competitive employment of individuals with disabilities and the expectation that individuals with disabilities are able to meet the same employment standards, responsibilities, and expectations as any other working-age adult.

(c) Tasks. The EFTF performs the following tasks:

(1) designs an education and outreach process targeted at working-age individuals with disabilities, including young adults with disabilities, the families of those individuals, state agencies, and service providers that is aimed at raising expectations of the success of individuals with disabilities in integrated, individualized, and competitive employment;

(2) develops recommendations for policy, procedure, and rule changes necessary to allow the employment first policy to be fully implemented; and

(3) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. Not later than September 1st of each even-numbered year, the EFTF submits a report to the Governor, the Texas Legislature, and the Executive Commissioner regarding its findings and recommendations.

(e) Abolition. The EFTF is abolished, and this section expires, on September 1, 2017.

(f) Membership. The Executive Commissioner determines the number of members on the EFTF.

(1) Each member is appointed by the Executive Commissioner.

(2) The Executive Commissioner must appoint at least the following:

(A) an individual with a disability;

(B) a family member of an individual with a disability;

(C) a representative of HHSC;

(D) a representative of the Texas Department of State Health Services;

(E) a representative of the Texas Department of Assistive and Rehabilitative Services;

(F) a representative of the Texas Department of Family and Protective Services;

(G) a representative of the Texas Department of Aging and Disability Services;

(H) a representative of the Texas Workforce Commission;

(I) a representative of the Texas Education Agency;

(J) an advocate for individuals with disabilities;

(K) a representative of a provider of integrated and competitive employment services; and

(L) an employer or a representative of an employer in an industry in which individuals with disabilities might be employed.

(3) At least one-third of the EFTF must be composed of individuals with disabilities, and no more than one-third of the task force may be composed of advocates for individuals with disabilities.

(4) An EFTF member serves at the will of the Executive Commissioner.

(g) Presiding officer. The Executive Commissioner appoints an EFTF member to be the presiding officer.

§351.833. STAR Kids Managed Care Advisory Committee.

(a) Statutory authority. Texas Government Code §533.00254 establishes the STAR Kids Managed Care Advisory Committee (STAR Kids Advisory Committee).

(b) Purpose. The STAR Kids Advisory Committee advises HHSC on the establishment and implementation of the STAR Kids managed care program.

(c) Tasks. The STAR Kids Advisory Committee makes recommendations consistent with its purpose to HHSC through regularly scheduled meetings and staff assigned to the committee.

(d) Abolition. On the first anniversary of the date HHSC completes implementation of the STAR Kids Medicaid managed care program under Texas Government Code §533.00253, the advisory committee is abolished and this section expires.

(e) Membership. The Executive Commissioner appoints the members of the STAR Kids Advisory Committee in accordance with Texas Government Code §533.00254.

(f) Presiding officer.

(1) The Executive Commissioner appoints the presiding officer.

(2) The presiding officer serves at the will of the Executive Commissioner.

§351.835. Advisory Committee on Qualifications for Health Care Translators and Interpreters.

(a) Statutory authority. Texas Government Code §531.704 requires the Executive Commissioner to establish the Advisory Committee on Qualifications for Health Care Translators and Interpreters (ACQHCTI).

(b) Purpose. The ACQHCTI advises HHSC on qualifications and standards for health care translators and interpreters for persons with limited English proficiency and persons who are deaf and hard of hearing.

(c) Tasks. The ACQHCTI performs the following tasks:

(1) establishes and recommends qualifications for health care interpreters and health care translators, including:

(A) developing strategies for implementing the regulation of health care interpreters and health care translators; and

(B) making recommendations to HHSC for any legislation necessary to establish and enforce qualifications for health care interpreters and health care translators or for the adoption of rules by state agencies regulating health care practitioners, hospitals, physician offices, and health care facilities that hire health care interpreters or health care translators; and

(2) performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. The ACQHCTI prepares and submits reports in accordance with statutory requirements and at the request of the Executive Commissioner.

(e) Abolition. The ACQHCTI will be automatically abolished, and this section expires, one year after its first committee meeting.

(f) Membership.

(1) The ACQHCTI consists of not fewer than ten members and no more than 24 members.

(A) Each member is appointed by the Executive Commissioner.

(B) Membership must comply with Texas Government Code §531.705.

(2) Members serve at the will of the Executive Commissioner.

(g) Presiding officer. The ACQHCTI selects a presiding officer from among its members.

§351.837. Texas Autism Council.

(a) Statutory authority. The Texas Autism Council is established in accordance with HHSC's general authority to establish committees under Texas Government Code §531.012(a).

(b) Purpose. The Texas Autism Council advises and make recommendations to HHSC and the Executive Commissioner to ensure that the needs of persons of all ages with autism spectrum disorder and their families are addressed and that all available resources are coordinated to meet those needs.

(c) Tasks. The Texas Autism Council performs the following activities:

(1) makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee; and

(2) other tasks consistent with its purpose that are requested by the Executive Commissioner.

(d) Reporting requirements. The Texas Autism Council performs reporting activities assigned by Texas Human Resources Code §114.008.

(e) Abolition. The Texas Autism Council is abolished, and this section expires, on August 31, 2018.

(f) Membership.

(1) The Texas Autism Council consists of no more than 24 members.

(A) Each public member is appointed by the Executive Commissioner.

(B) Each ex officio member is appointed by the commissioner or executive head of the represented state agency.

(C) Each member must have knowledge of and an interest in autism spectrum disorder.

(D) Texas Autism Council membership is allocated as follows:

(i) The majority of public members are family members of a person with autism spectrum disorder.

(ii) A representative from each of the following state agencies will serve as an ex officio member:

(I) Texas Department of Aging and Disability Services;

(II) Texas Department of Family and Protective Services;

(III) Texas Department of State Health Services;

(IV) Texas Health and Human Services Commission;

(V) Texas Workforce Commission; and

(VI) Texas Education Agency.

(2) Except as necessary to stagger terms, each public member is appointed to serve a term of two years.

(3) An ex officio member serves in an advisory capacity only and may not:

(A) serve as an officer; or

(B) vote.

(g) Presiding officer.

(1) The Texas Autism Council selects a presiding officer from among its members.

(2) Unless reelected, the presiding officer serves a term of one year.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601560
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.614

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, §10.614, concerning Utility Allowances. This repeal is being proposed concurrently with the proposal of new §10.614, concerning Utility Allowances, which will improve compliance with new requirements related to the HOME program concerning utility allowances and newly released guidance from Treasury for the Housing Tax Credit ("HTC") program.

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

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

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 15, 2016, through May 16, 2016, to receive input on the proposed amendment. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MAY 16, 2016.

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§10.614. Utility Allowances.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601563
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-2330

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10 TAC §10.614

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 10, Uniform Multifamily Rules, §10.614, concerning Utility Allowances.

The HOME Final Rule, 24 CFR Part 92, was updated in August 2013. The rule introduced a new requirement for the Department, as the Participating Jurisdiction, to determine a Development's utility allowance using the HUD Utility Model Schedule. The Utility Allowance rule is being updated to codify this requirement and describe the process by which the Department will calculate the utility allowance annually.

Related to the Housing Tax Credit ("HTC") program, Treasury released final Treasury Regulation §1.42-10 Utility Allowance in the Federal Register on March 3, 2016. The revisions to the regulation is cause for further updates to §10.614. Specifically, the updates address what to do when there is not an applicable Public Housing Authority with a Housing Choice Voucher ("Section 8") Program, what it means to be a "HUD-Regulated" building, and changes to the Energy Consumption Model and submetering provisions.

Further, the Department has identified a need for more detail in the rule to provide better guidance on how to properly calculate a utility allowance for all Department administered multifamily programs.

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

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be improved compliance with affordable housing program administered by the Department. There will not be any increased economic cost to any individuals required to comply with the new section that are not required by participating in a federal program.

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

REQUEST FOR PUBLIC COMMENT. The public comment period will be held April 15, 2016, through May 16, 2016, to receive input on the proposed new section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Stephanie Naquin, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-3359. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. MAY 16, 2016.

STATUTORY AUTHORITY. The new section is proposed pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The proposed new section affects no other code, article, or statute.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a utility allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a utility allowance if it is not calculated in accordance with this section. Owners are expected to comply with the provisions of this section, as well as, any existing federal or state program guidance.

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

(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator ("URL")) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service. If the utility company is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved.

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility *(e.g.* cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes *(e.g.* Customer Charge); and,

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accountants and can be found at http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain records directly from the Utility Provider.

(4) Renewable Source. Energy produced from energy property described in Internal Revenue Code ("IRC") §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(5) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by the Owner of the building or to a third party billing company and the utility is:

(A) Based on the resident's actual consumption of that utility and not an allocation method or Ratio Utility Billing System ("RUBS"); and

(B) The rate at which the utility is billed does not exceed the rate incurred by the building Owner for that utility.

(6) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, and Exchange buildings, include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and

(iii) Renewable Source Utilities.

(B) For HOME, Bond, HTF, NSP, and TCAP RF Developments, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(7) Utility Provider. The company that provides residential utility service *(e.g.* electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a utility allowance for all programs except Developments funded with HOME, NSP, and TCAP RF funds.

(1) Rural Housing Services (RHS) buildings or buildings with RHS assisted tenants. The applicable utility allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted tenants.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any tenant in the building receives RHS rental assistance payments, and the rents and the utility allowances of the building are reviewed by HUD (HUD-regulated building), the applicable utility allowance for all rent restricted Units in the building is the applicable HUD utility allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded HOME to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The utility allowance established by the applicable PHA for the Section 8 Existing Housing Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate utility allowance schedule for Apartments (5+ Units), one for Duplex/Townhomes and another for Single Family Homes. The Development consist of twenty buildings, ten of which are Apartments (5+ Units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a utility allowance schedule specifically for energy efficient Units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five (5) years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the utility allowance if the resident is responsible for that utility.

(iv) If the individual components of a utility allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The utility allowance in this example is $54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the utility allowance remains the applicable PHA utility allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a utility allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program; or

(II) The Department's Housing Choice Voucher Program.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools *(e.g.* MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the Units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding *(e.g.* 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the Units and buildings have met the Green Discount elected when the request is submitted as required in subsection (k) of this section.

(iv) Do not take into consideration any costs *(e.g.* penalty) or credits that a consumer would incur because of their actual usage. Example 614(3): The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less that 2000 kWh. Example 614(4): A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building loca-

tion, and available historical data. Component Charges used must be no older than in effect sixty (60) days prior to the beginning of the ninety (90) day period described in subsection (e) of this section; and

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least 5 Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type, whichever is greater. Example 614(5): A Development has 20 three bedroom/one bath Units, and 80 three bedroom/two bath Units. Each bedroom/bathroom equivalent Unit is within 120 square feet of the same floor area. Data must be supplied for at least five of the three bedroom/one bath Units, and sixteen of the three bedroom/two bath Units. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(ii) Upload the information in subclauses (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the ninety (90) day period after which the Owner intends to implement the allowance, reflecting data no older than sixty (60) days prior to the ninety (90) day implementation period described in subsection (e) of this section;

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage *(e.g.* actual kilowatt usage for electricity) for each month of the twelve (12) month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current utility allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the utility allowance for each bedroom size using the guidelines described in subclauses (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than twelve (12) months of data is provided for any Unit, only the data for the most current twelve (12) months will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility *(e.g.* kilowatts over the last twelve (12) months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph.

(d) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance *(e.g.* base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is disbursing the bill to the tenant through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(e) Changes in the Utility Allowance. An Owner may not change utility allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(7): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in subsection (c)(3)(E) (concerning the Actual Use Method), within 90 days of the receipt of the request. For a review involving a utility allowance for an application for funding from the Department, the request will not be reviewed until the program area notifies the compliance division that the application is being considered for funding.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(8): The Owner has chosen to calculate the electric portion of the utility allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the Owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subsection (c)(1), (2) or (3)(A) of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least ninety (90) days after the change. For methodologies as described in subsections (c)(3)(B) - (E) of this section, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the ninety (90) day period in which

the Owner intends to implement the utility allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.
Figure: 10 TAC §10.614(e)(3)

(f) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due ninety (90) days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the utility allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved utility allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(g) In accordance with 24 CFR §92.252, for HOME, NSP and TCAP RF funds for which the Department is the funding source, the utility allowance will be established in the following manner:

(1) By April 30th, the Department will calculate the utility allowance for each HOME, NSP, and TCAP RF Developments using HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or

(C) The owner may be contacted and asked to complete the Utility Allowance Questionnaire. In such case, a five (5) day period will be provided to return the completed questionnaire.

(2) Utilities will be evaluated in the following manner:

(A) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(B) For deregulated utilities:

(i) The Department will use the Power to Choose website and search available Utility Providers by zip code;

(ii) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,

(iii) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be inputted into the Model.

(3) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The Owner will be provided a five (5) day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the tenants will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five (5) day period, the Owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(4) Once approved, the allowance must be implemented for rent due in all program Units thirty (30) days after written approval from the Department is received.

(5) HTC Buildings in which there are HOME, NSP, or TCAP RF Units are considered HUD-Regulated buildings and the HUD Model Schedule must be used for all rent restricted Units (with the exception of Units occupied by households that receive tenant based rental assistance, in which case, the allowance is established by the program from where the household receives the assistance). For HOME if the Department is not the awarding jurisdiction, Owners are required to obtain the utility allowance established by the awarding jurisdiction and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the utility allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example 614(9): ABC Apartments is an existing HTC Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the utility allowance for the HTC Program. The appropriate utility allowance for the PRA Program is the PHA method.

(i) Combining Methods. With the exception of HUD regulated buildings and RHS buildings, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building *(e.g.* electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance.

(j) The Owner shall maintain and make available for inspection by the tenant all documentation, including, but not limited to, the data, underlying assumptions and methodology that were used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the tenant at the convenience of both the Owner and tenant.

(k) If an Owner want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial utility allowance for the Development, the Owner must submit utility allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(l) The Department reserves the right to outsource to a third party the review and approval of all or any utility allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(m) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field. The Department will not be able to approve requests that are incomplete and/or are not submitted correctly.

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2330

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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.2, §163.5

The Texas Medical Board (Board) proposes amendments to §163.2, concerning Full Texas Medical License, and §163.5, concerning Licensure Documentation.

The amendment to §163.2 corrects a citation in subsection (d)(3) related to a reference to an applicant's eligibility requirements for alternative license procedures for military service members, veterans, and spouses. The correction clarifies that the eligibility requirements are listed in additional numbered paragraphs of subsection (d).

The amendment to §163.5 changes language under subsection (d)(4) and (5) by eliminating an applicant's requirement to report having been treated on an in- or out-patient basis for certain mental or physical illnesses that "could" have impaired the applicant's ability to practice medicine, and replacing same with language that requires an applicant to report those physical or mental illnesses that have impaired or currently impair the applicant's ability to practice medicine.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are clear and consistent with current processes, comply with the Americans with Disabilities Act, and are consistent with physician licensure application questions relating to impairment.

Mr. Freshour has also determined that for the first five-year period the sections are in effect there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides 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.

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

§163.2. Full Texas Medical License.

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

(d) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted medical license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas medical license; or

(B) within the five years preceding the application date held a medical license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described in [~~paragraph (1) of~~] this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this subsection, shall be expedited by the board's licensure division as if they meet the provisions of §163.13 of this title (relating to expedited Licensure Process). Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this subsection:

(A) are not required to comply with §163.7 of this title (relating to Ten Year Rule); and

(B) in demonstrating compliance with §163.11(a) of this title (relating to Active Practice of Medicine), must only provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within one of the last three years preceding receipt of an Application for licensure.

(e) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §163.1 of this title, credit verified

military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a medical license suspended or revoked by another state or a Canadian province;

(B) holds a medical license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§163.5. Licensure Documentation.

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

(d) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) have each medical liability carrier complete a form furnished by the board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) Inpatient Treatment for Alcohol/Substance Disorder or Physical or Mental Illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that impairs or has [~~did or could have~~] impaired the applicant's ability to practice medicine, shall submit documentation to include items listed in subparagraphs (A) - (D) of this paragraph. An inpatient facility shall include a hospital, ambulatory surgical center, nursing home, and rehabilitation facility.

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Disorder or Mental Illness. Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance disorder or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that impairs or has [~~did or could have~~] impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) DD214. A copy of the DD214, indicating separation from any branch of the United States military.

(7) Premedical School Transcript. Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Fingerprint Card. Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) (No change.)

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

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

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CHAPTER 171. POSTGRADUATE TRAINING PERMITS

22 TAC §171.3

The Texas Medical Board (Board) proposes amendments to §171.3, concerning Physician-in-Training Permits.

The amendments change language under subsection (c)(2)(D) and (E) by eliminating an applicant's requirement to report having been treated on an in- or out-patient basis for certain mental or physical illnesses that "could" have impaired the applicant's ability to practice medicine, and replacing same with language that requires an applicant to report those physical or mental illnesses that have impaired or currently impair the applicant's ability to practice medicine.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section, as proposed, is in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that comply with the Americans with Disabilities Act, and that are consistent with Physician-in-Training Permit application questions relating to impairment.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, 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.

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

§171.3. Physician-in-Training Permits.

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

(c) Application for Physician-in-Training Permit.

(1) Application Procedures.

(A) Applications for a physician-in-training permit shall be submitted to the board no earlier than the 120th day prior to the date the applicant intends to begin postgraduate training in Texas to ensure the application information is not outdated. To assist in the expedited processing of the application, the application should be submitted as early as possible within the sixty-day window prior to the date the applicant intends to begin postgraduate training in Texas.

(B) The board may, in unusual circumstances, allow substitute documents where exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions shall be reviewed by the board's executive director on a case-by-case basis.

(C) For each document presented to the board, which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a government official, official translation agency, or a college or university official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for training permit and shall approve the issuance of physician-in-training permits for all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee or panel of the board for review of the application for a determination of eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee or panel of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee or panel finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's or panel's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Government Code Chapter 552 and the Medical Practice Act, Texas Occupations Code §§155.007(g), 155.058, and 164.007(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(H) All applicants for physician-in-training permits whose applications have been filed with the board in excess of one year will be considered expired.

(I) If the Executive Director determines that the applicant clearly meets all PIT requirements, the Executive Director or a person designated by the Executive Director, may issue a permit to the applicant, to be effective on the date of the reported first date of the training program without formal board approval, as authorized by §155.002(b) of the Act.

(J) If the Executive Director determines that the applicant does not clearly meet all PIT requirements, a PIT may be issued

only upon action by the board following a recommendation by the Licensure Committee, in accordance with §155.007 of the Act (relating to Application Process) and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility).

(K) If the Executive Director determines that the applicant is ineligible for a PIT for one or more reasons listed under subsection (b)(1)(A) and (C) - (E) of this section, the applicant may appeal that decision to the Licensure Committee before completing other licensure requirements for a determination by the Committee solely regarding issues raised by the determination of ineligibility. If the Committee overrules the determination of the Executive Director, the applicant may then provide additional information to complete the application, which must be analyzed by board staff and approved before a license may be issued.

(2) Physician-in-Training Permit Application. An application for a physician-in-training permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §153.051 and as construed in board rules;

(B) certification by the postgraduate training program:

(i) for a Texas postgraduate training program, a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a Texas licensed physician, the Texas Licensed supervising physician of the postgraduate training program on a form provided by the board that certifies that:

(I) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(II) the applicant has met all educational and character requirements established by the program and has been accepted into the program; and

(III) the program has received a letter from the dean of the applicant's medical school that states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school.

(ii) if the applicant is completing rotations in Texas as part of the applicant's residency out-of-state training program or with the military:

(I) a certification must be completed by the director of medical education, the chair of graduate medical education, the program director, or, if none of the previously named positions is held by a physician licensed in any state, the supervising physician, licensed in any state, of the postgraduate training program on a form provided by the board that certifies that:

(-a-) the program meets the definition of an approved postgraduate training program in subsection (a)(1), (a)(2), and (a)(4) of this section;

(-b-) the applicant has met all educational and character requirements established by the program and has been accepted into the program;

(-c-) the program has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training, if the applicant has not yet graduated from medical school; and

(II) a certification by the Texas Licensed physician supervising the Texas rotations of the postgraduate training program on a form provided by the board that certifies:

(-a-) the facility at which the rotations are being completed;

(-b-) the dates the rotations will be completed in Texas; and

(-c-) that the Texas on-site preceptor physician will supervise and be responsible for the applicant during the rotation in Texas;

(C) arrest records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority by the applicant and said authority must submit copies directly to the board;

(D) medical records for inpatient treatment for alcohol/substance disorder, mental illness, and physical illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance disorder, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that impairs or has [~~did or could have~~] impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the hospitalization;

(ii) all records, submitted directly from the inpatient facility;

(iii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iv) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(E) medical records for outpatient treatment for alcohol/substance disorder, mental illness, or physical illness. Each applicant that has been treated on an outpatient basis within the last five years for alcohol/substance abuse, mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or a physical illness that impairs or has [~~did or could have~~] impaired the applicant's ability to practice medicine, shall submit documentation to include, but not limited to:

(i) an applicant's statement explaining the circumstances of the outpatient treatment;

(ii) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(iii) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee;

(F) an oath on a form provided by the board attesting to the truthfulness of statements provided by the applicant;

(G) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(3) Physician-in-Training Application for Rotator PITs. If the applicant is enrolled in postgraduate training program that is outside of Texas, and requests a permit to complete a rotation in Texas that is less than 60 consecutive days as part of an approved postgraduate training, the applicant must submit all documents listed in paragraph

(2) of this subsection except that the applicant shall not be required to submit medical records as listed in paragraph (2)(D) and (E) of this subsection.

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

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

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Mari Robinson, J.D.
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CHAPTER 184. SURGICAL ASSISTANTS

22 TAC §§184.4 - 184.6, 184.8, 184.18, 184.25

The Texas Medical Board (Board) proposes amendments to §§184.4, 184.5, 184.6, 184.8, 184.18, and 184.25, concerning Surgical Assistants.

The amendment to §184.4, concerning Qualifications for Licensure, corrects a citation in subsection (c)(3) related to a reference to an applicant's eligibility requirements for alternative license procedures for military service members, veterans, and spouses. The correction clarifies that the eligibility requirements are listed in additional numbered paragraphs of subsection (c).

The amendment to §184.5, concerning Procedural Rules for Licensure Applicants, amends subsection (b), clarifying the determination of licensure eligibility process related to an application for surgical assistant licensure. The amendments further clarify that the procedures outlined under Chapter 187 of this title (relating to Procedural Rules) concerning determinations of licensure ineligibility apply to applications for surgical assistant licensure.

The amendment to §184.6, concerning Licensure Documentation, deletes the word "medical" to correct a reference to the category of surgical assistant licensure.

The amendment to §184.8, concerning License Renewal, deletes the word "residence", as such information is not collected by the Medical Board in the process of renewing a surgical assistant's license.

The amendment to §184.18, concerning Administrative Penalties, eliminates subsection (f) due to the language's redundancy with Chapters 187 and 189 of this title (relating to Procedural Rules and Compliance Program) which sufficiently address the process related to imposition of administrative penalties.

The amendment to §184.25, concerning Continuing Education, deletes subsection (k), due to the language's redundancy with §184.18 of this title (relating to Administrative Penalties) and Chapter 187 of this title (relating to Procedural Rules) which sufficiently address the process related to imposition of administrative penalties.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing this proposal will be to have rules that are clear and consistent with current processes.

Mr. Freshour has also determined that for the first five-year period the sections are in effect, there will be no fiscal implication to state or local government as a result of enforcing the sections as proposed. There will be no effect to individuals required to comply with the rules as proposed. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides 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. The amendment is also proposed under the authority of Texas Occupations Code Annotated, §§206.101, 206.203, 206.209, 206.212, 206.313 and 206.351.

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

§184.4. Qualifications for Licensure.

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

(c) Alternative License Procedures for Military Service Members, Military Veterans, and Military Spouses.

(1) An applicant who is a military service member, military veteran, or military spouse may be eligible for alternative demonstrations of competency for certain licensure requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for licensure as specified in this chapter.

(2) To be eligible, an applicant must be a military service member, military veteran, or military spouse and meet one of the following requirements:

(A) holds an active unrestricted surgical assistant license issued by another state that has licensing requirements that are substantially equivalent to the requirements for a Texas surgical assistant license; or

(B) within the five years preceding the application date held a surgical assistant license in this state.

(3) The executive director may waive any prerequisite to obtaining a license for an applicant described by [~~in paragraph (1) of~~] this subsection after reviewing the applicant's credentials.

(4) Applications for licensure from applicants qualifying under this section, shall be expedited by the board's licensure division. Such applicants shall be notified, in writing or by electronic means, as soon as practicable, of the requirements and process for renewal of the license.

(5) Alternative Demonstrations of Competency Allowed. Applicants qualifying under this section, notwithstanding:

(A) the one year expiration in §184.5(a)(2) of this title (relating to Procedural Rules for Licensure Applicants), are allowed an additional six months to complete the application prior to it becoming inactive; and

(B) the 20 day deadline in §184.5(a)(6) of this title, may be considered for permanent licensure up to five days prior to the board meeting; and

(C) the requirement to produce a copy of a valid and current certificate from a board approved national certifying organization in §184.6(b)(4) of this title (relating to Licensure Documentation), may substitute certification from a board approved national certifying organization if it is made on a valid examination transcript.

(d) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the Board shall, with respect to an applicant who is a military service member or military veteran as defined in §184.2 of this title (relating to Definitions), credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a license issued by the Board.

(2) This section does not apply to an applicant who:

(A) has had a surgical assistant license suspended or revoked by another state or a Canadian province;

(B) holds a surgical assistant license issued by another state or a Canadian province that is subject to a restriction, disciplinary order, or probationary order; or

(C) has an unacceptable criminal history.

§184.5. Procedural Rules for Licensure Applicants.

(a) An applicant for licensure:

(1) whose documentation indicates any name other than the name under which the applicant has applied must furnish proof of the name change;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for licensure will require submission of a new application and inclusion of the current licensure fee. 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;

(3) who in any way falsifies the application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the completed application form and fee are received by the board;

(6) must have the application for licensure complete in every detail at least 20 days prior to the board meeting at which the applicant is considered for licensure. An applicant may qualify for a temporary license prior to being considered by the board for licensure, as required by §184.7 of this title (relating to Temporary Licensure); and

(7) must complete an oath swearing that the applicant has submitted an accurate and complete application.

(b) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review each application for licensure and shall recommend to the board all applicants eligible for licensure. [~~The executive director also shall report to the board the names of all applicants determined to be ineligible for licensure, together with the reasons for each recommendation. An applicant deemed ineligible for licensure by the executive director may request review of such recommendation by the board's licensure committee within 20 days of receipt of such notice, and the executive director may refer any application to the licensure committee for a recommendation concerning eligibility. If the committee finds the applicant ineligible for licensure, such recommendation, together with the reasons, shall be submitted to the board unless the applicant requests a hearing not later than the 20th day after the date the applicant receives notice of the determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act and its subsequent amendments and the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant for licensure. A surgical assistant whose application for licensure is denied by the board shall receive a written statement containing the reasons for the board's action.~~]

(2) If the executive director or designee determines that the applicant clearly meets all licensing requirements, the executive director or designee may issue a license to the applicant, to be effective on the date issued without formal board approval, as authorized by §206.209 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all licensing requirements as prescribed by the Act and this chapter, a license may be issued only upon action by the board following a recommendation by the board's licensure committee, in accordance with §206.209 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant may:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(4) If an applicant fails to take timely action as provided under paragraph (3) of this subsection, such inaction shall be deemed a withdrawal of his or her application.

(5) To promote the expeditious resolution of any licensure matter, the executive director, with the approval of the board, may recommend that an applicant be eligible for a license, but only under certain terms and conditions and present a proposed agreed order or remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant may:

(A) sign the order/remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without the necessity of initiating a Disciplinary Licensure Investiga-

tion (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to licensure eligibility;

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(6) If an applicant fails to take timely action as provided under paragraph (5) of this subsection, such inaction shall be deemed a withdrawal of his or her application.

(c) Committee Referrals. An applicant who has either requested to appear before the licensure committee of the board or has elected to be referred to the licensure committee of the board due to a determination of ineligibility by the Executive Director in accordance with section, in lieu of withdrawing the application for licensure, may be subject to a Disciplinary Licensure Investigation as defined in §187.13 of this title. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this title.

(d) All reports received or gathered by the board on each applicant are confidential and are not subject to disclosure under the Public Information Act, Tex. Gov't Code, Ch. 552. The board may disclose such reports to appropriate licensing authorities in other states.

§184.6. Licensure Documentation.

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

(c) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation submitted with the translated document.

(A) An official translation from the school or appropriate agency attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency who is a member of the American Translation Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use the phrase: "Subscribed and Sworn this _____ day of _____, 20___." The notary must then sign and date the translation, and affix his/her notary seal to the document.

(2) Arrest records. If an applicant has ever been arrested the applicant must request that the arresting authority submit to the board copies of the arrest and arrest disposition.

(3) Inpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been admitted to an inpatient facility within the last five years for treatment of alcohol/substance disorder or mental illness must submit the following:

(A) applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority, professional society or impaired practitioner committee.

(4) Outpatient treatment for alcohol/substance disorder or mental illness. Each applicant that has been treated on an outpatient basis within the past five years for alcohol/substance disorder must submit the following:

(A) applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychotherapist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority, professional society or impaired practitioners committee.

(5) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must:

(A) have each liability carrier complete a form furnished by this board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter to the board explaining the allegation, relevant dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(6) Additional documentation. Additional documentation may be required as is deemed necessary to facilitate the investigation of any application for [~~medical~~] licensure.

(d) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

§184.8. License Renewal.

(a) Surgical assistants licensed by the board shall register biennially and pay a fee. A surgical assistant may, on notification from the board, renew an unexpired licensed by submitting a required form and paying the required renewal fee to the board on or before the expiration date of the license. The fee shall accompany a written application that sets forth the licensee's name, mailing address, [~~residence,~~] the address of each of the licensee's offices, and other necessary information prescribed by the board.

(b) The board may prorate the length of the initial surgical assistant registration and registration fees, so that registrations expire on a single date, regardless of the board meeting at which the surgical assistant is licensed.

(c) The board shall provide written notice to each practitioner at the practitioner's address of record at least 30 days prior to the expiration date of the license.

(d) Within 30 days of a surgical assistant's change of mailing[, ~~residence~~] or office address from the address on file with the board, a surgical assistant shall notify the board in writing of such change.

(e) A licensee shall furnish a written explanation of his or her affirmative answer to any question asked on the application for license renewal, if requested by the board. This explanation shall include all details as the board may request and shall be furnished within 14 days of the date of the board's request.

(f) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a surgical assistant to denial of the renewal and/or to discipline pursuant to §206.301 of the Act.

(g) Expired Annual Registration Permits.

(1) If a surgical assistant's registration permit has been expired for 90 days or less, the surgical assistant may obtain a new permit by submitting to the board a completed permit application, the registration fee, and the penalty fee, as defined in §175.3(6) of this title (relating to Penalties).

(2) If a surgical assistant's registration permit has been expired for longer than 90 days but less than one year, the surgical assistant may obtain a new permit by submitting a completed permit application, the registration fee, and a penalty fee as defined in §175.3(6) of this title.

(3) If a surgical assistant's registration permit has been expired for one year or longer, the surgical assistant's license is automatically canceled, unless an investigation is pending, and the surgical assistant may not obtain a new permit.

(4) A surgical assistant may not hold himself out as a licensed surgical assistant if he holds an expired permit.

(h) A military service member who holds a surgical assistant license in Texas is entitled to two years of additional time to complete any other requirement related to the renewal of the military service member's license.

§184.18. Administrative Penalties.

(a) Pursuant to §206.351 of the Act, the board by order may impose an administrative penalty, in accordance with and subject to §§187.75 - 187.82 of this title (relating to the Imposition of Administrative Penalty), against a person licensed or regulated under the Act who violates the Act or a rule or order adopted under the Act. The imposition of such a penalty shall be consistent with the requirements of the Act.

(b) The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on the factors set forth under the Act, §206.351(c) and Chapter 190 of this title (relating to Disciplinary Guidelines).

(d) Consistent with the Act, §206.351(e), if the board by order determines that a violation has occurred and imposes an administrative penalty on a person licensed or regulated under the Act, the board shall give notice to the person of the board's order which shall include a statement of the right of the person to seek judicial review of the order.

(e) An administrative penalty may be imposed under this section for the following:

(1) failure to timely comply with a board subpoena issued by the board pursuant to §206.308 of the Act and board rules shall be grounds for the imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(2) failure to timely comply with the terms, conditions, or requirements of a board order shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(3) failure to timely report a change of address to the board shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(4) failure to timely respond to a patient's communications shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(5) failure to comply with the complaint procedure notification requirements as set forth in §184.19 of this title (relating to Complaint Procedure Notification) shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation;

(6) failure to provide show compliance proceeding information in the prescribed time shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation; and

(7) for any other violation other than quality of care that the board deems appropriate shall be grounds for imposition of an administrative penalty of no less than $100 and no more than $5,000 for each separate violation.

[~~(f) In the case of untimely compliance with a board order, the board staff shall not be authorized to impose an administrative penalty without an informal show compliance proceeding if the person licensed or regulated under the Act has not first been brought into compliance with the terms, conditions, and requirements of the order other than the time factors involved.~~]

(f) [~~(g)~~] Any order proposed under this section shall be subject to final approval by the board.

(g) [~~(h)~~] Failure to pay an administrative penalty imposed through an order shall be grounds for disciplinary action by the board pursuant to the Act, §206.302(a)(4), regarding unprofessional or dishonorable conduct likely to deceive or defraud, or injure the public, and shall also be grounds for the executive director to refer the matter to the attorney general for collection of the amount of the penalty.

(h) [~~(i)~~] A person who becomes financially unable to pay an administrative penalty after entry of an order imposing such a penalty, upon a showing of good cause by a writing executed by the person under oath and at the discretion of the Disciplinary Process Review Committee of the board, may be granted an extension of time or deferral of no more than one year from the date the administrative penalty is due. Upon the conclusion of any such extension of time or deferral, if payment has not been made in the manner and in the amount required, action authorized by the terms of the order or subsection (g) [~~(h)~~] of this section and the Act, §206.301(a)(4) may be pursued.

§184.25. Continuing Education.

(a) As a prerequisite to the registration of a surgical assistant's license, 18 hours of continuing education (CE) in surgical assisting or in courses that enhance the practice of surgical assisting are required to be completed every 12 months in the following categories:

(1) at least 9 of the annual hours are to be from formal courses that are:

(A) designated for AMA/PRA Category I credit by a CE sponsor accredited by the Accreditation Council for Continuing Medical Education;

(B) approved for prescribed credit by the Association of Surgical Technologists/ Association of Surgical Assistants, the American Board of Surgical Assistants, or the National Surgical Assistants Association;

(C) approved by the Texas Medical Association based on standards established by the AMA; or

(D) designated for AOA Category 1-A credit approved by the American Osteopathic Association.

(2) At least one of the annual formal hours of CE which are required by paragraph (1) of this subsection must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CE involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in paragraph (1) of this subsection as part of their course planning.

(3) The remaining 9 hours each year may be composed of informal self-study, attendance at hospital lectures or grand rounds not approved for formal CE, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) A licensed surgical assistant must report on the license renewal application if he or she has completed the required continuing education since the licensee last registered with the board. A licensee who timely registers, may apply CE credit hours retroactively to the preceding year's annual requirement, however, those hours may be counted only toward one registration permit. A licensee may carry forward CE credit hours earned prior to a registration report which are in excess of the 18-hour annual requirement and such excess hours may be applied to the following years' requirements. A maximum of 36 total excess credit hours may be carried forward and shall be reported according to the categories set out in subsection (a) of this section. Excess CE credit hours of any type may not be carried forward or applied to an annual report of CE more than two years beyond the date of the annual registration following the period during which the hours were earned.

(c) A licensed surgical assistant may request in writing an exemption for the following reasons:

(1) the licensee's catastrophic illness;

(2) the licensee's military service of longer than one year's duration outside the state;

(3) the licensee's residence of longer than one year's duration outside the United States; or

(4) good cause shown submitted in writing by the licensee that gives satisfactory evidence to the board that the licensee is unable to comply with the requirement for continuing education.

(d) Exemptions are subject to the approval of the executive director of the board and must be requested in writing at least 30 days prior to the expiration date of the license.

(e) An exception under subsection (c) of this section may not exceed one year but may be requested annually, subject to the approval of the executive director of the board.

(f) This section does not prevent the board from taking board action with respect to a licensee or an applicant for a license by requiring additional hours of continuing education or of specific course subjects.

(g) The board may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the board.

(h) Unless exempted under the terms of this section, a licensee's apparent failure to obtain and timely report the 18 hours of CE as required annually and provided for in this section shall result in the denial of licensure renewal until such time as the licensee obtains and reports the required CE hours; however, the executive director of the board may issue to such a surgical assistant a temporary license numbered so as to correspond to the nonrenewed license. Such a temporary license shall be issued at the direction of the executive director for a period of no longer than 90 days. A temporary license issued pursuant to this subsection may be issued to allow the surgical assistant who has not obtained or timely reported the required number of hours an opportunity to correct any deficiency so as not to require termination of ongoing patient care.

(i) CE hours that are obtained to comply with the CE requirements for the preceding year as a prerequisite for obtaining licensure renewal, shall first be credited to meet the CE requirements for the previous year. Once the previous year's CE requirement is satisfied, any additional hours obtained shall be credited to meet the CE requirements for the current year.

(j) A false report or statement to the board by a licensee regarding CE hours reportedly obtained shall be a basis for disciplinary action by the board pursuant to §§206.302-.304 of the Act and §§164.051-.053 of the Medical Practice Act, Tex. Occ. Code Ann. A licensee who is disciplined by the board for such a violation may be subject to the full range of actions authorized by the Act including suspension or revocation of the surgical assistant's license, but in no event shall such action be less than an administrative penalty of $500.

~~[(k) Administrative penalties for failure to timely obtain and report required CE hours may be determined by the Disciplinary Process Review Committee of the board as provided for in §184.l9 of this chapter (relating to Administrative Penalties).]~~

(k) ~~[(l)]~~ Unless otherwise exempted under the terms of this section, failure to obtain and timely report CE hours for the renewal of a license shall subject the licensee to a monetary penalty for late registration in the amount set forth in Chapter 175 of this title (relating to Fees, Penalties, and Applications). Any temporary CE licensure fee and any administrative penalty imposed for failure to obtain and timely report the 18 hours of CE required annually for renewal of a license shall be in addition to the applicable penalties for late registration or as set forth in Chapter 175 of this title (relating to Fees, Penalties and Applications).

(l) ~~[(m)]~~ A surgical assistant, who is a military service member, may request an extension of time, not to exceed two years, to complete any CE requirements.

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

Filed with the Office of the Secretary of State on April 4, 2016.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 305-7016

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.10, License Required. The proposed amendment will increase licensure mobility, clarify exemption under the Psychologists' Licensing Act, and better ensure compliance with the letter and spirit of §501.004 of the Occupations Code.

Individuals with doctoral degrees in psychology come to Texas from all over the United States and Canada to complete the clinical training required for licensure and/or board certification by providing psychological services in recognized training institutions and facilities. Many of these individuals plan on ultimately becoming licensed and practicing in states other than Texas. Since the postdoctoral fellowship is essentially a required or expected part of training, in spirit, it falls within the category of "course of study" as listed in Texas Occupations Code Ann. §501.004(a)(2). Moreover, because these individuals may not be staying in Texas to practice, it may be considered unreasonable to expect them to start the licensure process by applying for the PLP, though such may be of financial benefit to the facility in which they obtain their training. In terms of the "course of study" issue, postdoctoral programs meeting national guidelines include didactics in addition to research and other nonclinical activities.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§461.10. License Required.

(a) A person may not engage in or represent that the person is engaged in the practice of psychology within this State, unless the person is licensed or been issued trainee status by the Board, or the person is exempt under §501.004 of the Psychologists' Licensing Act.

(b) A person is engaged in the practice of psychology within this State if any of the criteria set out in §501.003(b) of the Psychologists' Licensing Act occurs within this State, either in whole or in part.

(c) The activity or service of a post-doctoral fellow or resident in psychology is exempt from the Board's jurisdiction pursuant to §501.004(a)(2) of the Psychologists' Licensing Act if all of the following criteria are met:

(1) The person is enrolled in a formal post-doctoral program that is:

(A) accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) substantially equivalent to a program described in subparagraph (A) of this paragraph;

(2) The activities or services take place under qualified supervision and are part of the formal post-doctoral program; and

(3) The person is designated as a psychological intern or trainee, or by another title that clearly indicates the person's training status.

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601482
Darrel D. Spinks
Executive Director
Texas State Board of Psychologists
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 305-7700

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.11, Informed Consent/Describing Psychological Services. The proposed amendment will clarify the duty to obtain informed consent in an inpatient setting, and reduce the regulatory burden by eliminating any requirement for duplicative informed consent when a patient has already given a general consent.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments

may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§465.11. Informed Consent/Describing Psychological Services.

(a) Except in an inpatient setting where a general consent has been signed, licensees must [~~Licensees~~] obtain and document in writing informed consent concerning all services they intend to provide to the patient, client or other recipient(s) of the psychological services prior to initiating the services, using language that is reasonably understandable to the recipients unless consent is precluded by applicable federal or state law.

(b) Licensees provide appropriate information as needed during the course of the services about changes in the nature of the services to the patient client or other recipient(s) of the services using language that is reasonably understandable to the recipient to ensure informed consent.

(c) Licensees provide appropriate information as needed, during the course of the services to the patient client and other recipient(s) and afterward if requested, to explain the results and conclusions reached concerning the services using language that is reasonably understandable to the recipient(s).

(d) When a licensee agrees to provide services to a person, group or organization at the request of a third party, the licensee clarifies to all of the parties the nature of the relationship between the licensee and each party at the outset of the service and at any time during the services that the circumstances change. This clarification includes the role of the licensee with each party, the probable uses of the services and the results of the services, and all potential limits to the confidentiality between the recipient(s) of the services and the licensee.

(e) When a licensee agrees to provide services to several persons who have a relationship, such as spouses, couples, parents and children, or in group therapy, the licensee clarifies at the outset the professional relationship between the licensee and each of the individuals involved, including the probable use of the services and information obtained, confidentiality, expectations of each participant, and the access of each participant to records generated in the course of the services.

(f) At any time that a licensee knows or should know that he or she may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the licensee explains the potential conflict to all affected parties and adjusts or withdraws from all professional services in accordance with Board rules and applicable state and federal law. Further, licensees who encounter personal problems or conflicts as described in [~~Rule~~] Board rule §465.9(i) that will prevent them from performing their work-related activities in a competent and timely manner must inform their clients of the personal problem or conflict and discuss appropriate termination and/or referral to insure that the services are completed in a timely manner.

(g) When persons are legally incapable of giving informed consent, licensees obtain informed consent from any individual legally designated to provide substitute consent.

(h) When informed consent is precluded by law, the licensee describes the nature and purpose of all services, as well as the confidentiality of the services and all applicable limits thereto, that he or she intends to provide to the patient, client, or other recipient(s) of the psychological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

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

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.13

The Texas State Board of Examiners of Psychologists proposes an amendment to §469.13, Non-Compliance with Professional Development Requirements. The proposed amendment is necessary to resolve a conflict with the requirement set forth in Board rule §461.11(c)(5) that all professional development hours be obtained during the 12-month period preceding a licensee's renewal date.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701 or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§469.13. Non-Compliance with Professional Development Requirements.

(a) The license of any licensee who fails to comply with the Board's mandatory professional development requirements pursuant to Board rule §461.11 of this title (relating to Professional Development), is on delinquent status as of the renewal date of the license.

(b) If professional development compliance is not proved within 45 days after the license renewal date, the licensee shall be subject to a complaint for violation of Board rule §461.11(a) of this title applies.

(c) A person may not engage in the practice of psychology with a delinquent license, as stated in Board rule §461.7(c) of this title (relating to License Statuses).

(d) If the license is not activated within one year of expiration and goes void, a new application must be filed to obtain active licensure, and the professional development complaint will be reinstated. The complaint must be resolved before a new license will be issued.

(e) Upon notice of professional development violation, the licensee may:

(1) Submit proof that professional development was obtained within the year preceding the renewal [~~date plus the 45-day grace period~~]. Upon receipt and approval, the complaint will be dismissed;

(2) For a first violation, submit proof of late compliance and pay an administrative penalty, which is not considered disciplinary action;

(3) Resign the license in lieu of adjudication by requesting an agreed order of resignation; or

(4) Appear before an informal settlement conference to resolve the matter.

(f) Any payment of an administrative penalty to resolve a complaint is in addition to any applicable renewal fee and late renewal fee assessed by the Licensing Division for late license renewal, pursuant to Board rule §473.4 of this title (relating to Late Fees for Renewals (Not Refundable)).

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601484
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 305-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.36

The General Land Office (GLO) proposes amendments to §15.36 (relating to Certification Status of City of Galveston Dune Protection and Beach Access Plan) to certify the City of Galveston (City) amendments to its Beach Access Plan (Plan). The GLO proposes to add new subsection (c) to certify as consistent with state law amendments to the City Plan that increase the City's Beach User Fee (BUF).

Copies of the Plan and any amendments to the Plan are available from the City of Galveston Coastal Resource Manager at (409) 797-3621 and from the GLO's Archives and Records Division, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, phone number (512) 463-5277.

BACKGROUND

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Beach/Dune Rules (31 Texas Administrative Code (TAC) §15.3(o) and §15.8(d)), a local government with jurisdiction over Gulf Coast beaches must submit its Plan, BUF Plan, and any proposed amendments to the Plan or BUF to the GLO for certification. The GLO must review and, if appropriate, certify that the Plan is consistent with state law by amendment of a rule as required in Texas Natural Resources Code §61.015(b) and §61.022(c). The certification by rule reflects the state's certification of the Plan, but the text of the Plan is not adopted by the GLO as provided in 31 TAC §15.3(o)(4).

On January 15, 2016, the Galveston City Council adopted Ordinance No. 16-003 amending Section 29-90 of the City Code related to Beach Access, Dune Protection and Beachfront Construction. The ordinance becomes effective upon the GLO's approval of the BUF Plan, which proposes to increase the BUF imposed in accordance with 31 TAC §15.8 and Texas Natural Resources Code §61.022(c).The Plan was submitted to the GLO with a request for certification of the BUF Plan as consistent with state law.

The City is a coastal community on Galveston Island bordering Galveston Bay and the Gulf of Mexico, and includes approximately 24 miles of jurisdictional beach. The areas governed by the Plan include those beaches and adjacent areas within the City jurisdiction that border the Gulf of Mexico. The Plan was first adopted on August 12, 1993 and was most recently amended to adopt the City's Erosion Response Plan, which was certified by the GLO as consistent with state law and became effective on April 12, 2012.

ANALYSIS OF THE CITY OF GALVESTON PLAN AMENDMENTS AND GLO'S PROPOSED AMENDMENTS TO 31 TAC §15.36

As provided in 31 TAC §15.8, local governments may request an increase in the existing BUF provided that the local governments demonstrate that there are additional costs to the local government for providing public services and facilities directly related to the public beach. Pursuant to 31 TAC §15.3(o) and §15.8(d), the City amended its Plan on January 15, 2016 in Ordinance No. 16-003 to increase the BUF, and submitted the amended Plan to the GLO with a request for certification of the Plan as consistent with state law. The amendment to the City Plan modifies Section 29-90(o)(7)(f) to increase the BUF for daily fees from $8.00 to up to a maximum of $15.00 per vehicle, and season passes from $25 to up to a maximum of $50 per vehicle at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Parks #1-3.

The City provides that the BUF increase is necessary due to the continuous rise of expenses to meet the demand for new and/or improved beach-related services in the parks and to offset the withdrawal of funding from reserves to provide beach-related services, including beach nourishment projects. The City identifies that the proposed BUF increase will help provide for multiple beach nourishment projects and other beach related services

through coordination with the Galveston Island Park Board of Trustees (Park Board).

The City identifies public park enhancement projects in the Park Board Beach Parks Master Plan (Master Plan). In the short term, the revenue generated by the increased BUF will be used to: expand restroom, changing and rinse-off facilities at the public parks; improve overall accessibility and use of the parks for disabled persons; provide for additional beach access signage; and provide for general parking improvements.

In the long term, the City identifies that increased BUF revenues will be used to: ensure concessions are available on the beach; construct new pavilions and visitor centers; expand camping and RV facilities; and expand and enhance public parking in the parks through land acquisitions and constructing additional parking structures. Supporting documentation (Staff Report 16PA-001) identifies that the City and Park Board will use the fee revenues to maintain three (3) large scale beach nourishment projects at Dellanera Park, the Galveston Seawall from 12th to 61st Streets, and a cooperative project with the U.S. Army Corps of Engineers to nourish beaches west of 61st Street in front of the Galveston Seawall.

Based on the information provided by the City, the GLO has determined that the BUF increase is reasonable because it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services; does not unfairly limit public use of and access to and from public beaches in any manner; and is consistent with §15.8 of the Beach/Dune Rules and the Open Beaches Act. Therefore, the GLO finds that the changes to the Plan are consistent with state law.

FISCAL AND EMPLOYMENT IMPACTS

Mr. David Green, Deputy Director for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended section as proposed is in effect, there will be minimal, if any, fiscal implications to the state government as a result of enforcing or administering the amended section. Mr. Green has determined that there will be no fiscal implications for the local government as a result of enforcing or administering the amended section of the Plan. The costs of collection will remain unchanged with the increase to the BUF. The City may experience an increase in net revenue estimated at approximately $1.2 million for each year of the first five years the proposed section is in effect.

Mr. Green has determined that the proposed amendment will minimally affect the costs of compliance for large and small businesses that use the beach where the BUF increase will be implemented. The costs will be hard to determine because the impacts are case specific and the proposed changes relate to parking in beach parks and are not otherwise related to the permitting or restriction of business activities. The impact of any fee is mitigated by the existence of no-fee areas and the fact that, with the exception of camping at Dellanera RV Park, the BUF will not be charged after the close of the summer season. Mr. Green has also determined that for each year of the first five years the proposed amendments are in effect, there will be no impacts to the local economy.

PUBLIC BENEFIT

Mr. Green has determined that the public will be affected by the increase of the BUF. Individuals will be required to pay a larger daily and annual fee. However, the Plan identifies as required by 31 TAC §15.8(h) no-fee areas of the public beach which serve to mitigate the impact of the BUF increase on individuals. Free parking is available at Stewart Beach and Apffel Park, and free parking on-beach and off-beach parking is available in thirty-nine (39) public beach access points in the City's jurisdiction. Also, none of the access points and beach parks charge a parking fee following the close of the summer season, with the exception of overnight camping at Dellanera RV Park. Parking is also available along the Galveston Seawall with a rate of $1.00 per hour ($8 maximum) and an annual pass for $25 per year.

Mr. Green has determined that the BUF benefits the public and beach goers because the increased fees are necessary for the City to continue to fund and provide adequate and improved beach related services to the public as detailed in the Park Board Master Plan. According to the City Staff Report 16PA-001, the BUF will also directly contribute to proposed beach nourishment projects, which will enhance access to and safe and healthy use of the public beach by the public.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce the risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendment is proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022(b), 61.022(c), and 61.070, which requires the GLO to adopt rules governing the preservation and enhancement of the public's right to use and access public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law. The proposed amendments do not exceed federal or state requirements.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required.

The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments of the United States Constitution or Article I, §17 and §19 of the Texas Constitution. The GLO has determined that the proposed amendments would not affect any private real property in a manner that restricts or limits any owner's right to property or use of that property.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in the Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and (c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed this proposed action for consistency with the Coastal Manage-

ment Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The amendment that modifies the City's BUF Plan is consistent with 31 TAC §501.12(4) and (5). The proposed amendments are consistent with the CMP goals in 31 TAC §501.12(5) because it ensures and enhances planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. The proposed amendments are also consistent with 31 TAC §501.12(5) as they provide the City with the ability to enhance public access and enjoyment of the coastal zone, protect and preserve and enhance the CNRA, and balance other uses of the coastal zone.

The proposed amendment is also consistent with CMP policies in §501.26(a)(4) (relating to Policies for Construction in the Beach/Dune System) by enhancing and preserving the ability of the public, individually and collectively, to exercise its rights of use and access to and from public beaches.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under Texas Natural Resources Code §§61.011, 61.015(b), 61.022(b), 61.022(c), and §61.070, which requires the GLO to adopt rules governing the preservation and enhancement of the public's right to access and use public beaches, imposition or increase of beach user fees, and certification of local government beach access and use plans as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, and 61.022 are affected by the proposed amendments.

§15.36. Certification Status of City of Galveston Dune Protection and Beach Access Plan.

(a) The City of Galveston (City) has submitted to the General Land Office a dune protection and beach access plan (Beach and Dune Plan) which was adopted on August 12, 1993 and amended on February 9, 1995, June 19, 1997, February 14, 2002, March 13, 2003, January 29, 2004, February 26, 2004, and April 12, 2012. The City's plan is fully certified as consistent with state law.

(b) The General Land Office certifies as consistent with state law the City's Erosion Response Plan as an amendment to the Dune Protection and Beach Access Plan.

(c) The General Land Office certifies as consistent with state law the City's Beach and Dune Plan as amended on January 15, 2016 by Ordinance 16-003 to increase the daily beach user fee to a maximum of $15.00 and season passes to a maximum of $50 at Stewart Beach, R.A. Apffel Park, Dellanera Park, and Pocket Parks #1-3.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601519
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-1859

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PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.6

The School Land Board (SLB) proposes new §151.6, relating to the Procedures for the Release of Funds from the Real Estate Special Fund Account, under Title 31, Part 4, Chapter 151 of the Texas Administrative Code.

New §151.6 will establish the procedures to be used by the School Land Board (SLB) to determine the dates that releases will be made and the amounts of money that will be released on those dates from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the State Board of Education (SBOE) for investment in the Permanent School Fund (PSF), as required by §51.413(b) of the Texas Natural Resources Code.

In the last legislative session, H.B. 1551 amended §51.413(b), Texas Natural Resources Code, to provide that the Board adopt rules to establish the procedure to be used to determine the amount and date of any transfer of money from the RESFA to either the ASF or the SBOE for investment in the PSF.

The proposed rule drafted in response to H.B. 1551 is comprised of three sections:

Paragraph (1) states that no later than July 31 of each even-numbered year, the Chief Investment Officer ("CIO") will: (A) perform an analysis that determines an amount equal to 6% of the average market value of the TXGLO Real Assets Investment Portfolio ("Portfolio") over the trailing sixteen-quarter measurement period; (B) round the amount determined in (A) up or down to the nearest $5,000,000 increment; and (C) determine the average quarterly change in the average market value of the Portfolio over the trailing sixteen-quarter measurement period, then multiply this amount times 4 and add the resulting amount to the amount determined in (A) and round the resulting amount up or down to the nearest $5,000,000 increment.

Paragraph (2) states that not later than September 1 of each even-numbered year, the CIO will provide to the Board the results of the CIO's analyses performed in accordance with paragraph (1) and make recommendations to the SLB regarding the release of funds from the RESFA. The Board will adopt a resolution detailing the actual amounts to be released to either the ASF or the SBOE in each of the individual years of the next-approaching biennium and the actual dates of the releases.

Paragraph (3) states that not later than September 1 of each even-numbered year, the CIO will submit a report to the Legislature, Comptroller, SBOE, and Legislative Budget Board that states the dates and amounts approved by the Board for release to either the ASF or to the SBOE during next-approaching biennium.

Rusty Martin, Chief Investment Officer for the Texas General Land Office, has determined that for each year of the first five years the new section as proposed is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the new section as it relates solely to the administrative functions of the SLB.

Mr. Martin has also determined that there will be no effect on small business, and a local employment impact statement on this proposed new section is not required, because the proposed rule will not have any identifiable material adverse affect on any local economy in the first five years it will be in effect.

Comments may be submitted to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, Office of General Counsel, P.O. Box 12873, Austin, Texas 78711-2873; facsimile number (512) 463-6311; email address, walter.talley@glo.texas.gov. Comments must be received no later than 5:00 p.m., 30 (thirty) days after the proposed new section is published.

The new section is proposed under Texas Natural Resources Code, Chapter 51, including §51.407 and §51.413(b), which authorizes the board to adopt rules to establish the procedure to be used to determine the amount and date of any transfer of money from the RESFA to either the ASF or the SBOE for investment in the PSF.

Texas Natural Resources Code §51.413 and §32.061 are affected by this proposed rulemaking.

§151.6. Procedures for the Release of Funds from the Real Estate Special Fund Account.

This rule shall establish the procedures to be used by the School Land Board (SLB) to determine the dates that releases will be made and the amounts of money that will be released on those dates from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the State Board of Education (SBOE) for investment in the Permanent School Fund (PSF), as required by §51.413(b) of the Texas Natural Resources Code.

(1) Not later than July 31 of each even-numbered year, the Chief Investment Officer (CIO) of the General Land Office (GLO) will perform an analysis, using March 31 GLO investment valuation data, as follows:

(A) Determine an amount equal to 6% of the average market value of the GLO PSF Real Assets Investment Portfolio (Portfolio) over the trailing sixteen-quarter measurement period.

(B) Round the amount calculated in paragraph (1)(A) of this section up or down to the nearest $5,000,000 increment.

(C) Determine the average quarterly change in the average market value of the Portfolio over the trailing sixteen-quarter measurement period. Multiply this amount times 4 and add the resulting product to the amount determined in paragraph (1)(A) of this section. Round the resulting amount up or down to the nearest $5,000,000 increment.

(2) Not later than September 1 of each even-numbered year, the CIO will provide to the SLB at a regularly scheduled SLB meeting the results of the analysis performed in accordance with paragraph (1) of this section and make recommendations to the SLB regarding the release of funds from the RESFA. At such regularly scheduled meeting, the SLB will adopt a resolution detailing the actual amounts to be released to either the ASF or the SBOE for investment in the PSF in each of the individual years of the next-approaching fiscal biennium and the actual dates of the releases.

(3) Not later than September 1 of each even-numbered year, the SLB, in consultation with the CIO, will submit a report to the Legislature, Comptroller, SBOE, and Legislative Budget Board that states the dates and amounts approved by the SLB for release from the RESFA to either the ASF or SBOE for investment in the PSF during the next-approaching fiscal biennium.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601535
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner, General Land Office
School Land Board
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.48

The Comptroller of Public Accounts proposes amendments to §5.48, concerning deductions for contributions to charitable organizations.

The amendment will modify the existing language to provide that state employees can submit an electronic deduction authorization entered through an online giving tool website or application. The amendment will also modify the existing language regarding personal identifying information required to be included in a deduction change authorization or a deduction cancellation authorization. In addition, the amendment will clarify that all references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140. The amendment is authorized under Government Code, §659.132(h) and Senate Bill 217, 83rd Legislature, 2013.

Subsection (a) modifies the existing language to provide that state employees can submit an electronic deduction authorization entered through an online giving tool website or application. The subsection is also modified to clarify that references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140.

Subsection (b)(1), (3), (6), and (7) modify the existing language to provide that state employees can submit an electronic deduction authorization or cancellation entered through an online giving tool website or application.

Subsection (b)(3)(C)(i) and (6)(B)(i) modify the existing language to provide that appropriate identifying information is to be included in a deduction change authorization rather than a social security number.

Subsections (e), (j), (k), (u), and (w) modify the existing language to provide that state employees can submit an electronic deduction authorization entered through an online giving tool website or application.

Subsections (h), (i), (j), (n), (p), (q) and (r) also modify the existing language to clarify that references to local campaign manager(s) and local employee committee(s) are only applicable if the state policy committee has appointed a local campaign manager(s) and/or a local employee committee(s) under Government Code, §659.140.

New subsection (y) adds language to provide requirements that must be satisfied for the use of an online giving tool website or application.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by clarifying the administrative procedures of the state employee charitable campaign. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528 Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The proposal is pursuant to Government Code, §659.142(d) and Senate Bill 217, 83rd Legislature, 2013, which allow the comptroller to adopt rules.

The amendment implements changes made to the state employee charitable campaign by the state policy committee under Government Code, §659.140. The amendment also implements Government Code, Chapter 659, Subchapter I, as amended by Senate Bill 217, 83rd Legislature, 2013.

§5.48. Deductions for Contributions to Charitable Organizations.

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

(1) Campaign coordinator--The state employee who has volunteered and been designated by the chief administrator of a state agency to coordinate the state employee charitable campaign for that agency.

(2) Campaign material--A logo identifying the state employee charitable campaign, a campaign slogan, a campaign film, a campaign donor brochure, a donor authorization form, an online giving tool website and/or application, and other materials as approved by the state policy committee.

(3) Campaign year--For salary or wages paid once each month, the payroll periods from December 1st through November 30th. For salary or wages paid twice each month, the payroll periods from December 16th through December 15th. For salary or wages paid every other week by a state agency that is not an institution of higher education, the 26 consecutive payroll periods beginning with the period that corresponds to the payment of salary or wages occurring on or closest to, but not after, December 31st. For salary or wages paid every other week by an institution of higher education, the 26 consecutive payroll periods beginning with the period designated by the institution if the period is entirely within December.

(4) Charitable organization--Has the meaning assigned by Government Code, §659.131.

(5) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(6) Comptroller's electronic funds transfer system--The system authorized by Government Code, §403.016, that the comptroller uses to initiate payments instead of issuing warrants.

(7) Deduction--The amount subtracted from a state employee's salary or wages to make a contribution to a local campaign manager or a statewide federation or fund that has been assigned a payee identification number by the comptroller.

(8) Designated representative--A state employee volunteer or other individual named by a local campaign manager or a statewide federation or fund as its representative.

(9) Direct services--Has the meaning assigned by Government Code, §659.131.

(10) Eligible charitable organization--A charitable organization that is determined to be eligible to participate in the state employee charitable campaign as provided by this section and Government Code, §659.146.

(11) Eligible local charitable organization--A local charitable organization that has been approved for local participation in the state employee charitable campaign.

(12) Employer--A state agency that employs at least one state employee.

(13) Federated community campaign organization--Has the meaning assigned by Government Code, §659.131.

(14) Federation or fund--Has the meaning assigned by Government Code, §659.131.

(15) Generic campaign materials--Campaign materials that have not been modified to reflect a particular local campaign area's participants or a local employee committee.

(16) Health and human services--Has the meaning assigned by Government Code, §659.131.

(17) Holiday--A state or national holiday as specified by Government Code, §662.003. The term does not include a state or national holiday if the General Appropriations Act prohibits state agencies from observing the holiday.

(18) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(19) Indirect services--Has the meaning assigned by Government Code, §659.131.

(20) Institution of higher education--Has the meaning assigned by Education Code, §61.003. The term does not include a public junior college that has decided not to participate in the state employee charitable contribution program in accordance with subsection (x) of this section.

(21) Local campaign area--Has the meaning assigned by Government Code, §659.131.

(22) Local campaign manager--Any local campaign manager or managers appointed by the state policy committee under Government Code, §659.140(e)(1)(C). [~~A federated community campaign organization or a charitable organization that is selected by a local employee committee as provided by this section and Government Code, §659.144.~~]

(23) Local campaign materials--Campaign materials that have been modified to reflect a particular local campaign area's participants and the local employee committee for the area if the state policy committee has approved the modifications, and additional materials that the state policy committee has approved because they are based on and consistent with the campaign materials approved by the committee.

(24) Local charitable organization--Has the meaning assigned by Government Code, §659.131.

(25) Local employee committee--Any local employee committee or committees appointed by the state policy committee under Government Code, §659.140(e)(1)(B). [~~Has the meaning assigned by Government Code, §659.131.~~]

(26) May not--A prohibition. The term does not mean "might not" or its equivalents.

(27) Payee identification number--The 14-digit number that the comptroller assigns to each direct recipient of a payment made by the comptroller for the State of Texas.

(28) Public junior college--Has the meaning assigned by Education Code, §61.003. The term includes a community college.

(29) Salary or wages--Base salary or wages, longevity pay, or hazardous duty pay.

(30) State advisory committee--Has the meaning assigned by Government Code, §659.131.

(31) State agency--Has the meaning assigned by Government Code, §659.131.

(32) State campaign manager--A federated community campaign organization or a charitable organization that is selected by the state policy committee as provided by this section to coordinate state employee charitable campaign operations with any local campaign managers appointed by the state policy committee.

(33) State employee--An employee of a state agency. The term does not include an employee of a public junior college that is not participating in the state employee charitable contribution program in accordance with subsection (x) of this section.

(34) State employee charitable campaign--Has the meaning assigned by Government Code, §659.131.

(35) State employee charitable contribution program--The charitable deduction program authorized by Government Code, Chapter 659, Subchapter D (exclusive of the deductions authorized by Government Code, §659.1311(b) - (c)).

(36) State policy committee--Has the meaning assigned by Government Code, §659.131.

(37) Statewide federation or fund--A federation or fund that has been approved for statewide participation in the state employee charitable campaign.

(38) Uniform statewide payroll/personnel system--A system in which uniform statewide payroll procedures are followed.

(39) Workday--A calendar day other than Saturday, Sunday, or a holiday.

(b) Deductions.

(1) Authorization of deductions.

(A) A state employee who is not employed by an institution of higher education may authorize not more than three monthly deductions from the employee's salary or wages.

(B) A state employee who is employed by an institution of higher education may authorize not more than three monthly deductions from the employee's salary or wages, if the institution has not specified a higher maximum number of deductions that its employees may authorize, If the institution has specified a higher maximum number, then the employee may authorize not more than that number.

(C) A state employee may authorize only one deduction to any particular statewide federation or fund or local campaign manager.

(D) A state employee may authorize a deduction only if the employee:

(i) properly completes an authorization form or an electronic deduction authorization entered through the online giving tool website or application; and

(ii) submits the form to a designated representative of the statewide federation or fund or the local campaign manager to which the deduction will be paid or completes an electronic deduction authorization through the online giving tool website or application.

(E) Except as provided in this subparagraph, a state employee may authorize a deduction only during a state employee charitable campaign.

(i) State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its state employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. Those authorizations may be made even if a state employee charitable campaign is not occurring when the authorizations are made.

(ii) A state employee who begins employment with the state may authorize a deduction if the employee's employer receives the employee's properly completed authorization form or electronic deduction authorization not later than the 30th day after the employee's first day of employment with the agency. A new state employee may authorize a deduction even if a state employee charitable campaign is not occurring when the employment begins or the form or access to the electronic online giving tool website or application is provided. This clause does not apply to a state employee who transfers from one state agency to a second state agency.

(F) Neither the comptroller nor a state agency is liable or responsible for any damages or other consequences resulting from a state employee authorizing an incorrect amount of a deduction.

(2) Minimum amount of deductions. If a state employee authorizes a deduction, the minimum amount of the deduction is two dollars per month. This minimum applies to each deduction authorized by the employee. For example, if the employee authorizes two deductions, then the amount of each of those deductions must be at least two dollars per month.

(3) Changes in the amount of deductions.

(A) At any time during a campaign year, a state employee may authorize a change in the amount to be deducted from the employee's salary or wages during that year.

(B) A state employee may authorize a change only by submitting a written authorization or electronic deduction authorization change to the employee's employer. The authorization may be a properly completed authorization form, electronic deduction authorization entered through the online giving tool website or application, or another type of written communication that complies with subparagraph (C) of this paragraph.

(C) To be valid, a written communication, other than an authorization form or electronic deduction authorization, that a state employee submits for the purpose of authorizing a change must specify or contain:

(i) the employee's name and appropriate identifying information [~~social security number~~];

(ii) the name of the employee's employer;

(iii) the six-digit code number of the charity for which the change is being authorized or, if the number is unknown, the charity's name;

(iv) the new amount to be deducted;

(v) the effective date of the change; and

(vi) the employee's original signature.

(D) A state employee may not change the statewide federation or fund or the local campaign manager that receives deducted amounts if the change would be provided outside the time a state employee charitable campaign is being conducted.

(E) A state employee may not change the eligible charitable organizations designated to receive deducted amounts paid to a statewide federation or fund if the change would be provided outside the time a state employee charitable campaign is being conducted.

(F) A state employee may not change the eligible local charitable organizations designated to receive deducted amounts paid to a local campaign manager if the change would be provided outside the time a state employee charitable campaign is being conducted.

(4) Sufficiency of salary or wages to support a deduction.

(A) A state employee is solely responsible for ensuring that the employee's salary or wages are sufficient to support a deduction.

(B) If a state employee's salary or wages are sufficient to support only part of a deduction, then no part of the deduction may be made.

(C) If a state employee has multiple deductions and the employee's salary or wages are insufficient to support all the deductions, then none of the deductions may be made.

(D) The amount that may not be deducted from a state employee's salary or wages because they are insufficient to support the deduction may not be made up by deducting the amount from subsequent payments of salary or wages.

(5) Timing of deductions.

(A) Except as provided in subparagraph (B) of this paragraph, a deduction may be made only from the salary or wages that are paid on the first workday of a month.

(B) If a state employee is not entitled to receive a payment of salary or wages on the first workday of a month, then the employee's employer may designate the payment of salary or wages during the month from which a deduction will be made. A deduction may be made only once each month.

(6) Cancellation of deductions.

(A) A state employee may cancel a deduction at any time by submitting a written cancellation notice to the employee's employer or by canceling an electronic deduction authorization through the online giving tool website or application. The notice may be a properly completed authorization form, [~~or~~] another type of written communication, or an entry into the online giving tool website or application cancelling the deduction authorization. The authorization form or written communication shall comply [~~that complies~~] with subparagraph (B) of this paragraph.

(B) To be valid, a written communication, other than an authorization form or electronic deduction authorization, that a state employee submits for the purpose of canceling a deduction must specify or contain:

(i) the employee's name and appropriate identifying information [~~social security number~~];

(ii) the name of the employee's employer;

(iii) the six-digit code number of the charity for which the cancellation is being made or, if the number is unknown, the charity's name;

(iv) the amount of the deduction to be canceled;

(v) the effective date of the cancellation; and

(vi) the employee's original signature.

(7) Interagency transfers of state employees.

(A) A deduction that started while a state employee was employed by a state agency may resume after the employee transfers to a second state agency only if:

(i) the employee requests a copy of the employee's authorization form from the first state agency and submits the copy to the second state agency or alternatively requests a copy of the report from the online giving tool website or application or other documentation acceptable to the second state agency;

(ii) the employee properly completes and submits an additional authorization form to the second state agency or completes an electronic deduction authorization, if the agency requires submission of the form or completion of the electronic deduction authorization; and

(iii) the second state agency receives the copy of the employee's authorization form or electronic deduction authorization and the additional authorization form or electronic deduction authorization, if required, not later than the 30th day after the employee's first day of employment by the second state agency.

(B) A deduction that may resume under subparagraph (A) of this paragraph shall become effective at the second state agency not later than with the salary and wages paid on the first workday of the second month following the later of:

(i) the month in which the agency receives the copy of the authorization form or electronic deduction authorization to which subparagraph (A)(i) of this paragraph refers; or

(ii) the month in which the agency receives the additional authorization form or electronic deduction authorization, if the agency requires submission of the form or completion of the electronic deduction authorization.

(C) This subparagraph applies only if a state agency requires an additional authorization form or electronic deduction authorization to be submitted under subparagraph (A)(ii) of this paragraph. The statewide federation or fund or the local campaign manager named on the form or electronic deduction authorization must be the same as that named on the original authorization form or electronic deduction authorization. The additional authorization form or electronic deduction authorization may not make any changes other than those that a state employee who has not changed employers may make after a state employee charitable campaign has ended.

(c) Designation of charitable organizations to receive deducted amounts.

(1) Receiving deducted amounts through local campaign managers.

(A) This subparagraph applies to a state employee only if not employed by an institution of higher education. A state employee's authorization of a deduction to a local campaign manager may designate not more than nine eligible local charitable organizations to receive the deducted amounts through the manager.

(B) This subparagraph applies to a state employee only if employed by an institution of higher education. A state employee's authorization of a deduction to a local campaign manager may designate one or more eligible local charitable organizations to receive the employee's deducted amounts through the manager. The employee may designate not more than nine organizations if the employing institution of higher education has not specified a higher maximum number of designations that its employees may make. If the institution has specified a higher maximum number, then the employee may designate not more than that number.

(C) If a state employee's authorization of a deduction to a local campaign manager designates only one eligible local charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the local campaign manager.

(D) If a state employee's authorization of a deduction to a local campaign manager designates more than one eligible local charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(E) If an eligible local charitable organization that a state employee designates under subparagraph (A) or (B) of this paragraph is a federation or fund, then the federation or fund shall distribute the deducted amounts it receives to its affiliated eligible charitable organizations according to its policy.

(F) This subparagraph applies if a state employee's authorization of a deduction to a local campaign manager does not contain a valid designation. The undesignated initial distribution amounts with respect to the employee for eligible local charitable organizations and statewide federations or funds shall be determined according to this subparagraph.

(i) Only an eligible local charitable organization that has been approved to participate in the local campaign area may have an undesignated initial distribution amount. Only a statewide federation or fund to which state employees in the local campaign area have authorized deductions may have an undesignated initial distribution amount.

(ii) The undesignated initial distribution amount for an eligible local charitable organization is equal to the distribution percentage for the organization multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the organization's total designated initial distribution amount as determined or specified under subparagraphs (C) and (D) of this paragraph for all state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraphs (C) and (D) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(iii) The undesignated initial distribution amount for a statewide federation or fund is equal to the distribution percentage for the federation or fund multiplied by the amount of the employee's deduction authorization to the local campaign manager. The distribution percentage is equal to the total amount of deductions authorized to the federation or fund by state employees in the local campaign area divided by the sum of:

(I) the total designated initial distribution amount for all eligible local charitable organizations in the local campaign area as determined or specified under subparagraphs (C) and (D) of this paragraph; and

(II) the total amount of deductions authorized to statewide federations or funds by state employees in the local campaign area.

(G) The following example illustrates the calculation of undesignated initial distribution amounts according to subparagraph (F) of this paragraph.

(i) The following assumptions apply in this example.

(I) State employees in the Austin local campaign area have authorized $15,000 in deductions to the Austin local campaign manager. Of that amount, state employees have designated $10,000 for distribution to the following eligible local charitable organizations. Organization 1 has been designated to receive $5,000. Organization 2 has been designated to receive $3,000. And Organization 3 has been designated to receive $2,000.

(II) Of the $15,000 in authorized deductions to the Austin local campaign manager, $5,000 is undesignated.

(III) State employees in the Austin local campaign area have authorized total deductions of $10,000 to the following statewide federations or funds. Organizations 4 and 5 have each been authorized to receive $5,000.

(ii) The calculation of undesignated initial distribution amounts in this subparagraph relates only to the $5,000 in undesignated deductions to the Austin local campaign manager. This is because an eligible local charitable organization or a statewide federation or fund has an undesignated initial distribution amount only with respect to undesignated deductions.

(iii) The first step is to determine the designated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. That amount for each organization is the total amount of deductions that state employees have designated to the organization. Therefore, the designated initial distribution amount for Organization 1 is $5,000, Organization 2 is $3,000, and Organization 3 is $2,000.

(iv) The second step is to determine the distribution percentage for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The distribution percentage must be

determined according to subparagraph (F)(ii) of this paragraph. The distribution percentage for each organization is as follows:

(I) Organization 1--25%;

(II) Organization 2--15%;

(III) Organization 3--10%.

(v) The third step is to determine the distribution percentage for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The distribution percentage must be determined according to subparagraph (F)(iii) of this paragraph. The distribution percentage for each federation or fund is as follows:

(I) Organization 4--25%;

(II) Organization 5--25%.

(vi) The fourth step is to determine the undesignated initial distribution amount for each eligible local charitable organization listed in clause (i)(I) of this subparagraph. The amount must be determined by multiplying the organization's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

(I) Organization 1--$1,250;

(II) Organization 2--$750;

(III) Organization 3--$500.

(vii) The fifth and final step is to determine the undesignated initial distribution amount for each statewide federation or fund listed in clause (i)(III) of this subparagraph. The amount must be determined by multiplying the federation or fund's distribution percentage by the amount of undesignated deductions to the Austin local campaign manager. The amount for each organization is as follows:

(I) Organization 4--$1,250;

(II) Organization 5--$1,250.

(H) Notwithstanding anything in this paragraph, a local campaign manager shall distribute deducted amounts to an eligible local charitable organization or a statewide federation or fund according to the percentage method required by subsection (j) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(2) Receiving deducted amounts through statewide federations or funds.

(A) This subparagraph applies to a state employee only if not employed by an institution of higher education. A state employee's authorization of a deduction to a statewide federation or fund may designate not more than nine eligible charitable organizations to receive the deducted amounts through the federation or fund.

(B) This subparagraph applies to a state employee only if employed by an institution of higher education. A state employee's authorization of a deduction to a statewide federation or fund may designate one or more eligible charitable organizations to receive the employee's deducted amounts through the federation or fund. The employee may designate not more than nine organizations if the employing institution of higher education has not specified a higher maximum number of designations that its employees may make. If the institution has specified a higher maximum number, then the employee may designate not more than that number.

(C) If a state employee's authorization of a deduction to a statewide federation or fund designates only one eligible charitable organization, then the organization's designated initial distribution amount with respect to the employee is equal to the employee's entire deduction to the statewide federation or fund.

(D) If a state employee's authorization of a deduction to a statewide federation or fund designates more than one eligible charitable organization, then the designation is valid only if it specifies the designated initial distribution amount for each organization.

(E) This subparagraph applies if a state employee's authorization of a deduction to a statewide federation or fund does not contain a valid designation. The statewide federation or fund shall determine the undesignated initial distribution amount with respect to the employee for each eligible charitable organization affiliated with the federation or fund. The determination must be accomplished according to the federation or fund's policy.

(F) Notwithstanding anything in this paragraph, a statewide federation or fund shall distribute deducted amounts to an eligible charitable organization according to the percentage method required by subsection (k) of this section. A designated or undesignated initial distribution amount specified or determined under this paragraph is only the starting point for calculating the amount to be distributed.

(d) State employee charitable campaign.

(1) Time of the state employee charitable campaign. The state employee charitable campaign shall be conducted annually during the period after August 31st and before November 1st.

(2) Reimbursement of expenses incurred by state employees while representing charitable organizations. A state agency may not reimburse a state employee for expenses incurred while acting as a representative of a charitable organization.

(3) Participation by state employees. Participation by a state employee in the state employee charitable campaign is voluntary.

(e) Effective dates of authorization forms and electronic deduction authorizations.

(1) Effective date of authorization forms and electronic deduction authorizations provided during a state employee charitable campaign. A state employee's authorization form or electronic deduction authorization that is provided during a state employee charitable campaign is effective for the following campaign year if the form or electronic deduction authorization is completed properly, the form or electronic deduction authorization is signed by the employee, and the employee's employer receives the properly completed and signed form or electronic deduction authorization not later than November 15th before the start of that year. The deductions may not start before the beginning of that year.

(2) Effective date of authorization forms and electronic deduction authorizations provided immediately after a state agency is converted to the uniform statewide payroll/personnel system. State law says that a state agency, other than an institution of higher education, is not required to permit its state employees to authorize a deduction until the first full payroll period after the agency is converted to the uniform statewide payroll/personnel system. A state agency covered by that law shall permit its employees to authorize deductions so that they are effective not later than the first full payroll period after conversion of the agency. To be effective by that date, a properly completed authorization form or electronic deduction authorization must be received by the agency not later than the tenth workday before the first day of the agency's first full monthly payroll period after conversion.

(3) Effective date of authorization forms and electronic deduction authorizations provided by new state employees.

(A) Paragraph (1) of this subsection applies to a new state employee's authorization form or electronic deduction authorization if it:

(i) is received by the employee's employer during a state employee charitable campaign; and

(ii) authorizes a deduction to begin during the campaign year following the campaign year in which the form or electronic deduction authorization is received.

(B) This subparagraph applies to a new state employee's authorization form or electronic deduction authorization only if the form or electronic deduction authorization authorizes a deduction to begin during the same campaign year as the campaign year in which the employee's employer receives the form or electronic deduction authorization. The employer may decide when the deduction will take effect, subject to the following limitations.

(i) Except as provided in clause (ii) of this subparagraph, the deduction must begin not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form or electronic deduction authorization.

(ii) If the employer receives the form or electronic deduction authorization during October or November, then the employer may decide whether and when to give effect to the form or electronic deduction authorization.

(4) Effective date of authorization forms and electronic deduction authorizations that request changes in deductions.

(A) This paragraph applies only to a state employee's authorization form or electronic deduction authorization that requests a change to a deduction.

(B) The employer of the employee may decide when the change will take effect, subject to the following limitations.

(i) Except as provided in clause (ii) of this subparagraph, the change must take effect not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form or electronic deduction authorization.

(ii) If the employer receives the form or electronic deduction authorization during October or November of a campaign year and the form or electronic deduction authorization requests a change in a deduction for the year, then the employer may decide whether and when to give effect to the form or electronic deduction authorization.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form or electronic deduction authorization on July 2, 2016 [~~1994~~], and that the form or electronic deduction authorization requests a decrease in the amount of a deduction. The agency may make the decrease effective with the deduction that occurs on the August 1, 2016 [~~1994~~], salary payment. If the agency does not, then the agency must make the decrease effective with the deduction that occurs on the September 1, 2016 [~~1994~~], salary payment.

(5) Effective date of authorization forms and electronic deduction authorizations that request cancellations of deductions.

(A) This paragraph applies only to a state employee's authorization form or electronic deduction authorization that requests the cancellation of a deduction.

(B) The employer of the employee may decide when the cancellation will take effect. The cancellation must take effect, however, not later than with the employee's salary or wages that are paid on the first workday of the second month following the month in which the employer receives the form or electronic deduction authorization.

(C) The following example illustrates the requirements of this paragraph. Assume that a state agency receives an authorization form or electronic deduction authorization on July 2, 2016 [~~1994~~], and that the form or electronic deduction authorization requests the cancellation of a deduction. The agency may make the cancellation effective with the August 1, 2016 [~~1994~~], salary payment. If the agency does not, then the agency must make the cancellation effective with the September 1, 2016 [~~1994~~], salary payment.

(f) Requirements for the content and format of authorization forms.

(1) Prohibition against distributing or providing authorization forms. A local campaign manager or a statewide federation or fund may distribute or provide an authorization form to a state employee only if both the comptroller and the state policy committee have approved the form.

(2) Requirement to produce authorization forms. A local campaign manager or a statewide federation or fund must produce an authorization form that complies with the comptroller's requirements and this section.

(3) Restrictions on approval of authorization forms. Neither the comptroller nor the state policy committee may approve the authorization form of a local campaign manager or a statewide federation or fund unless the form:

(A) is at least 8 1/2 inches wide and 11 inches long;

(B) states that statewide federations or funds and local campaign managers are required to use the percentage method to distribute a state employee's deducted amounts to eligible charitable organizations designated by the employee instead of matching deducted amounts received to actual designations;

(C) accurately describes the percentage method; and

(D) complies with the comptroller's requirements for format and substance.

(g) Procedure for federations or funds to apply for statewide participation.

(1) Request for statewide participation. A federation or fund may not be a statewide federation or fund unless the federation or fund applies to the state policy committee for that status in accordance with this section, Government Code, §659.146, and the committee's procedures.

(2) Requirements for the application. The application of a federation or fund to be a statewide federation or fund must include:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Government Code, §659.146;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Notification of the comptroller. Upon approval of a federation or fund for statewide participation in the state employee charitable campaign, the state policy committee shall submit to the comptroller:

(A) the complete name of the federation or fund;

(B) the mailing address of the federation or fund;

(C) the full name, title, telephone number, and mailing address of the federation or fund's primary contact;

(D) the payee identification number of the federation or fund, when available; and

(E) the other information deemed necessary by the comptroller.

(4) Payee identification numbers. A federation or fund that has been approved for statewide participation and that does not have a payee identification number shall submit a request for one to the comptroller.

(5) Electronic funds transfers.

(A) A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a request to be paid by the comptroller through electronic funds transfers under rules adopted by the comptroller. This subparagraph applies only to the extent that the comptroller's electronic funds transfer system is used.

(B) A federation or fund that has been approved for statewide participation in the state employee charitable campaign shall submit a request to be paid by an institution of higher education through electronic funds transfers under rules or procedures adopted by the institution. This subparagraph applies only to the extent that the comptroller's electronic funds transfer system is not used.

(6) Beginning of deductions. The first payment of deducted amounts to a statewide federation or fund shall occur the first month of the first campaign year that begins after the federation or fund is approved for statewide participation in the state employee charitable campaign.

(h) Procedure for charitable organizations to apply for local participation.

(1) Request for local participation.

(A) A charitable organization may not be an eligible local charitable organization unless it applies to the state policy committee and any applicable [~~appropriate~~] local employee committee appointed by the state policy committee [~~for that status~~] in accordance with this section, Government Code, §659.147, and the committee's procedures.

(B) A federation or fund that wants to be an eligible local charitable organization may apply on behalf of its affiliated agencies.

(2) Requirements for applications from federations or funds. If a charitable organization applying to be an eligible local charitable organization is a federation or fund, then the organization must provide to the state policy committee and any applicable [~~appropriate~~] local employee committee appointed by the state policy committee:

(A) a letter from the presiding officer of the federation or fund's board of directors certifying compliance by the federation or fund and its affiliated agencies with the eligibility requirements of Government Code, §659.147;

(B) a copy of a letter from each affiliate of the federation or fund certifying that the federation or fund serves as the affiliate's representative and fiscal agent in the state employee charitable campaign;

(C) a copy of the conflict of interest policy approved by the federation or fund's board of directors, which prohibits its board members, executive director, and staff from engaging in business transactions in which they have material conflicting interests;

(D) if the executive director of the federation or fund receives material compensation for services rendered to any organization other than the federation or fund, a full disclosure of:

(i) the name of the organization;

(ii) the nature and amount of the compensation; and

(iii) the relationship of the organization to the federation or fund;

(E) a copy of the federation or fund's current operating budget, signed by the presiding officer of the federation or fund's board of directors; and

(F) an acknowledgment that the federation or fund is responsible for filing any appeals from its affiliated agencies that have not secured approval for statewide or local participation in the state employee charitable campaign.

(3) Beginning of deductions. The first deduction to pay an eligible local charitable organization shall occur the first month of the first campaign year that begins after the charitable organization is approved for local participation in the state employee charitable campaign.

(i) Payments of deductions.

(1) Prohibited payments to eligible local charitable organizations.

(A) Neither the comptroller nor an institution of higher education may pay deducted amounts directly to an eligible local charitable organization.

(B) Except as otherwise provided in this subparagraph, deducted amounts shall be paid directly to the appropriate local campaign manager if one has been appointed by the state policy committee. If the eligible local charitable organization involved is an affiliate of a statewide federation or fund, then the deducted amounts shall be paid directly to the federation or fund.

(2) Payments by the comptroller through electronic funds transfers. If feasible, the comptroller shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer.

(3) Payments through warrants issued by the comptroller.

(A) This paragraph applies only if it is infeasible for the comptroller to pay deducted amounts by electronic funds transfer.

(B) The comptroller shall pay deducted amounts by warrant and make the warrant available for pick up by the state agency whose employees' deductions are being paid by the warrant.

(C) A state agency shall mail or hand deliver a warrant picked up under subparagraph (B) of this paragraph to the payee of the warrant.

(D) Except as provided in subparagraph (E) of this paragraph, the deadline for mailing or hand delivering a warrant is the tenth workday of the month following the month when the salary or wages from which the deductions are made were earned.

(E) This subparagraph applies only to a deduction that occurs after the tenth workday of the month following the month when the salary or wages from which the deduction is made were earned. The deadline for a state agency to mail or hand deliver a warrant to pay the deduction is the second workday after the agency receives the warrant.

(4) Payments by institutions of higher education.

(A) This paragraph applies to deducted amounts from the salary or wages of a state employee of an institution of higher education only if the comptroller does not pay those amounts directly to a local campaign manager or a statewide federation or fund.

(B) If feasible, an institution of higher education shall pay deducted amounts to a local campaign manager or a statewide federation or fund by electronic funds transfer.

(C) If it is infeasible for an institution of higher education to pay deducted amounts by electronic funds transfer, then the institution shall make the payment by check.

(D) This subparagraph applies only if an institution of higher education pays deducted amounts by check.

(i) This clause applies only to deductions from salary or wages that are paid on the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month.

(ii) This clause applies only to deductions from salary or wages that are paid on a day other than the first workday of a month. An institution of higher education shall mail or hand deliver its check to the payee of the check not later than the 10th workday of the month following the month in which the salary or wages were earned.

(j) Distributions of deductions by <u>any</u> local campaign managers <u>appointed by the state policy committee</u>.

(1) Requirement to use the percentage method. A local campaign manager shall use the percentage method to distribute deducted amounts to eligible local charitable organizations and statewide federations or funds.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a local campaign manager shall calculate the contribution percentage for:

(i) each eligible local charitable organization that has been approved to participate in the local campaign area under the manager's responsibility; and

(ii) each statewide federation or fund to which state employees in the local campaign area have authorized deductions.

(B) The contribution percentage for an eligible local charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(C) - (D) of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(F)(ii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms <u>and electronic deduction authorizations</u> completed during the campaign.

(C) The contribution percentage for a statewide federation or fund is the ratio of:

(i) the federation or fund's undesignated initial distribution amount with respect to all state employees in the local campaign area as determined under subsection (c)(1)(F)(iii) of this section; to

(ii) the total amount of deductions authorized to the local campaign manager on authorization forms <u>and electronic deduction authorizations</u> completed during the campaign.

(D) The contribution percentage for an eligible local charitable organization or a statewide federation or fund may not be recalculated before the conclusion of the next state employee charitable campaign.

(E) The amount of deductions that a local campaign manager distributes to an eligible local charitable organization or a statewide federation or fund is equal to the product of:

(i) the contribution percentage of the organization or federation or fund; and

(ii) the total amount of deductions the manager is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Organization 1, an eligible local charitable organization, has a designated initial distribution amount of $5,000 and an undesignated initial distribution amount of $1,250.

(ii) Organization 2, an eligible local charitable organization, has a designated initial distribution amount of $3,000 and an undesignated initial distribution amount of $750.

(iii) Organization 3, an eligible local charitable organization, has a designated initial distribution amount of $2,000 and an undesignated initial distribution amount of $500.

(iv) Organization 4, a statewide federation or fund, has an undesignated initial distribution amount of $1,250.

(v) Organization 5, a statewide federation or fund, has an undesignated initial distribution amount of $1,250.

(vi) The total amount of deductions authorized to the local campaign manager is $15,000.

(vii) The local campaign manager has actually received $10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each organization according to paragraph (2)(B) - (C) of this subsection. The contribution percentage for each organization is as follows:

(i) Organization 1--41.67%;

(ii) Organization 2--25%;

(iii) Organization 3--16.67%;

(iv) Organization 4--8.33%;

(v) Organization 5--8.33%.

(C) The second and final step is to calculate the amount that the local campaign manager distributes to each organization according to paragraph (2)(E) of this subsection. The amount for each organization is as follows:

(i) Organization 1--$4,167;

(ii) Organization 2--$2,500;

(iii) Organization 3--$1,667;

(iv) Organization 4--$833;

(v) Organization 5--$833.

(4) Prohibition of distributions until payment reports reconciled. A local campaign manager may not make a distribution before the manager reconciles the payment reports received from the comptroller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A local campaign manager shall make distributions quarterly or more frequently than quarterly.

(k) Distributions of deductions by statewide federations or funds.

(1) Requirement to use the percentage method. A statewide federation or fund shall use the percentage method to distribute deducted amounts to eligible charitable organizations.

(2) Description of the percentage method.

(A) Immediately after the end of a state employee charitable campaign, a statewide federation or fund shall calculate the contribution percentage for each eligible charitable organization that is an affiliate of the federation or fund.

(B) The contribution percentage for an eligible charitable organization is the ratio of:

(i) the sum of:

(I) the organization's designated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(C) - (D) of this section; and

(II) the organization's undesignated initial distribution amount with respect to all state employees who have authorized deductions to the statewide federation or fund as determined under subsection (c)(2)(E) of this section; to

(ii) the total amount of deductions authorized to the statewide federation or fund on authorization forms and electronic deduction authorizations completed during the campaign.

(C) The contribution percentage for an eligible charitable organization may not be recalculated before the conclusion of the next state employee charitable campaign.

(D) The amount of deductions that a statewide federation or fund distributes to an eligible charitable organization is equal to the product of:

(i) the contribution percentage of the organization; and

(ii) the total amount of deductions the federation or fund is distributing.

(3) Example of the percentage method. This paragraph illustrates the percentage method described in paragraph (2) of this subsection.

(A) The following assumptions apply in this example.

(i) Eligible charitable organization 1 has a designated initial distribution amount of $5,000 and an undesignated initial distribution amount of $1,250.

(ii) Eligible charitable organization 2 has a designated initial distribution amount of $3,000 and an undesignated initial distribution amount of $750.

(iii) Eligible charitable organization 3 has a designated initial distribution amount of $2,000 and an undesignated initial distribution amount of $500.

(iv) The total amount of deductions authorized to the statewide federation or fund is $12,500.

(v) The statewide federation or fund has actually received $10,000 in deducted amounts.

(B) The first step is to calculate the contribution percentage for each eligible charitable organization according to paragraph (2)(B) of this subsection. The contribution percentage for each organization is as follows:

(i) Organization 1--50%;

(ii) Organization 2--30%;

(iii) Organization 3--20%.

(C) The second and final step is to calculate the amount that the statewide federation or fund distributes to each organization according to paragraph (2)(D) of this subsection. The amount for each organization is as follows:

(i) Organization 1--$5,000;

(ii) Organization 2--$3,000;

(iii) Organization 3--$2,000.

(4) Prohibition of distributions until payment reports reconciled. A statewide federation or fund may not make a distribution before the federation or fund reconciles the payment reports received from the comptroller or an institution of higher education with the payments received by electronic funds transfer or by warrant or check.

(5) Frequency of distributions. A statewide federation or fund shall make distributions quarterly or more frequently than quarterly.

(l) Charging administrative fees to cover costs incurred to make deductions. The comptroller has determined that the costs which would be covered by the charging of an administrative fee to charitable organizations would be insignificant. Therefore, the comptroller has decided not to charge the fee.

(m) Refunding excessive payments of deductions.

(1) Authorization of refunds. If the amount of deductions paid to a local campaign manager or a statewide federation or fund exceeds the amount that should have been paid, then the excess may be refunded to the state agency on whose behalf the payment was made.

(2) Methods for accomplishing refunds. If a refund is authorized by paragraph (1) of this subsection, then the refund shall be accomplished by:

(A) the state agency on whose behalf the payment was made subtracting the amount of the refund from a subsequent payment of deductions to the local campaign manager or statewide federation or fund; or

(B) the local campaign manager or the statewide federation or fund issuing a check in the amount of the refund to the state agency on whose behalf the payment was made, if authorized by paragraph (3) of this subsection.

(3) Paying refunds by check. A local campaign manager or a statewide federation or fund may issue a refund check only if the payee of the check first submits a written request for the refund to be made by check.

(4) Deadline for paying refunds by check. This paragraph applies only if a local campaign manager or a statewide federation or fund is authorized by paragraph (3) of this subsection to make a refund by check. The local campaign manager or the statewide federation or fund shall ensure that the refund check is received by the payee not later than the 30th day after the date on which the written request for the refund to be made by check is received.

(n) Responsibilities of the state policy committee.

(1) Statutory responsibilities. The state policy committee shall fulfill its statutory responsibilities as set forth in Government Code, Chapter 659, Subchapter I.

(2) Additional responsibilities. In addition to its statutory responsibilities, the state policy committee:

(A) shall establish an annual application, eligibility determination, and appeals period for statewide or local participation in the state employee charitable campaign;

(B) shall determine the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(C) shall review and resolve the appeals of entities not accepted for statewide or local participation in the state employee charitable campaign under procedures that comply with paragraph (3) of this subsection;

(D) shall disqualify a federation or fund from statewide participation in the state employee charitable campaign if the committee determines that the federation or fund intentionally filed an application that contains false or misleading information;

(E) shall establish penalties for non-compliance with this section by a statewide federation or fund, an eligible local charitable organization, the state campaign manager, or any [~~a~~] local campaign managers appointed by the state policy committee [~~manager~~];

(F) shall establish procedures for the selection and oversight of the state campaign manager and any local campaign managers appointed by the state policy committee;

(G) shall select to act as the state campaign manager:

(i) a federated community campaign organization in accordance with the criteria listed in paragraph (4) of this subsection, if any federated community campaign organization has applied to be the manager; or

(ii) a charitable organization in accordance with the criteria listed in paragraph (4) of this subsection, if no federated community campaign organization has applied to be the manager;

(H) may establish policies and procedures for the operation and administration of the state employee charitable campaign, including policies and procedures about the hearing of any grievance concerning the operation and administration of the campaign;

(I) shall consult with the state campaign manager and the state advisory committee before approving the campaign plan, budget, and materials;

(J) may not approve campaign materials if:

(i) they do not state that statewide federations or funds may or may not provide services in all local campaign areas;

(ii) they list a charitable organization as both a statewide federation or fund and an eligible local charitable organization;

(iii) they list a charitable organization as an affiliate of two or more statewide federations or funds unless the organization serves separate and distinct populations as part of each statewide federation or fund;

(iv) they list similarly named eligible local charitable organizations in the same local campaign area unless the applicable [~~appropriate~~] local employee committee, if one has been appointed by the state policy committee, has determined that each organization delivers services in different geographical areas within the local campaign area;

(v) they list a charitable organization as an affiliate of more than one federation or fund certified as an eligible local charitable organization unless the applicable [~~appropriate~~] local employee committee, if one has been appointed by the state policy committee, has determined that the charitable organization delivers services to separate and distinct populations in the local campaign area as part of its membership in the federations or funds;

(vi) they do not state that a local campaign manager or a statewide federation or fund may distribute quarterly a state employee's deductions;

(vii) they do not state that a local campaign manager or a statewide federation or fund is required to distribute a state employee's deductions based on the percentage method instead of matching deducted amounts received by the local campaign manager or statewide federation or fund to the employee's designations; or

(viii) they do not accurately describe the percentage method;

(K) shall review and approve or disapprove the generic materials used by the state campaign manager and any local campaign managers appointed by the state policy committee;

(L) shall ensure that local campaign areas do not overlap;

(M) shall ensure that only one local campaign manager, if one has been appointed by the state policy committee, is responsible for solicitation of all state employees in the local campaign area for which the manager has responsibility;

(N) shall submit to the comptroller the name and boundaries of each local campaign area not later than the 30th day after the end of the annual application period;

(O) shall compile and submit to the comptroller not later than the 30th day after the end of the annual application period a list of any [~~the~~] local campaign managers appointed by the state policy committee and the name, address, and telephone number of each manager's primary contact;

(P) shall notify the comptroller immediately after a change occurs to the name or mailing address of a statewide federation or fund or local campaign manager;

(Q) shall notify the comptroller immediately after a change occurs to the name, title, telephone number, or mailing address of the primary contact of a local campaign manager or a statewide federation or fund; and

(R) shall represent all statewide federations or funds and local campaign managers for the purposes of:

(i) communicating with the comptroller, including receiving and responding to correspondence from the comptroller; and

(ii) disseminating information, including information about the requirements of this section, to representatives of federations or funds, any local employee committees appointed by the state policy committee, and any local campaign managers appointed by the state policy committee.

(3) Appeals procedures. The procedures that the state policy committee adopts to review and resolve the appeal of an entity that was not accepted for statewide or local participation in the state employee charitable campaign must:

(A) prohibit the consideration of information that the committee has considered previously;

(B) provide sufficient time for a federation or fund to reapply for participation in that campaign; and

(C) permit a federation or fund that was not accepted for statewide participation to apply for participation in a local campaign area during the campaign.

(4) Criteria for selection of a state campaign manager. The state policy committee shall consider the following criteria when evaluating the application of a federated community campaign organization or a charitable organization to act as the state campaign manager:

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies;

(D) the geographic area serviced by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(5) Comptroller's reliance on decisions made by the state policy committee. The comptroller is entitled to rely on the state policy committee's:

(A) determination about the eligibility of a federation or fund and its affiliated agencies for statewide participation in the state employee charitable campaign;

(B) disqualification of a federation or fund from statewide participation in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(o) Responsibilities of the state advisory committee. The state advisory committee shall fulfill its statutory responsibilities as set forth in Government Code, Chapter 659, Subchapter I.

(p) Responsibilities of any local employee committees appointed by the state policy committee.

(1) Statutory responsibilities. A local employee committee shall fulfill its statutory responsibilities as set forth in Government Code, Chapter 659, Subchapter I, along with any duties prescribed by the state policy committee under Government Code, §659.140.

(2) Additional responsibilities. In addition to its statutory responsibilities and any duties prescribed by the state policy committee under Government Code, §659.140, any[~~, a~~] local employee committee appointed by the state policy committee:

(A) shall determine the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) may call upon and use outside expertise and resources available to the committee to assess the eligibility of a local charitable organization;

(C) shall disqualify a local charitable organization from local participation in the state employee charitable campaign if the committee determines that the organization intentionally filed an application that contains false or misleading information;

(D) shall, contingent upon the appointment of a local campaign manager by the state policy committee, select to act as the local campaign manager:

(i) a federated community campaign organization in accordance with the criteria listed in paragraph (3) of this subsection, if any federated community campaign organization has applied to be the manager; or

(ii) a charitable organization in accordance with the criteria listed in paragraph (3) of this subsection, if no federated community campaign organization has applied to be the manager;

(E) shall, contingent upon the appointment of a local campaign manager by the state policy committee, contract with the organization selected as the local campaign manager;

(F) shall, contingent upon the appointment of a local campaign manager by the state policy committee, consult with the local campaign manager before approving the local campaign plan, budget, and materials; and

(G) shall, contingent upon the appointment of a local campaign manager by the state policy committee, submit to the state policy committee upon contracting with the organization selected as the local campaign manager:

(i) the name of the local campaign area;

(ii) the name of the organization with which the local employee committee has contracted; and

(iii) the name, address, and telephone number of the primary contact of the local campaign manager.

(3) Criteria for selection of a local campaign manager. A local employee committee shall, contingent upon the appointment of a local campaign manager by the state policy committee, consider the following criteria when evaluating the application of a federated community campaign organization or a charitable organization to act as the local campaign manager:

(A) the number and diversity of voluntary health and human services agencies or affiliates that rely on the organization for financial support;

(B) the capability of the organization to conduct employee campaigns, as demonstrated by records of the amount of funds raised during the organization's last completed annual public solicitation of funds;

(C) the percent of solicited funds received by the organization during its last completed annual public solicitation of funds that were distributed to voluntary health and human services agencies;

(D) the geographic area serviced by the organization; and

(E) the organization's capability and expertise to provide effective campaign counsel and management as demonstrated by staff and equipment resources and examples of past campaign management.

(4) Comptroller's reliance on decisions made by a local employee committee. The comptroller is entitled to rely on a local employee committee's:

(A) determination about the eligibility of a local charitable organization for local participation in the state employee charitable campaign;

(B) disqualification of a local charitable organization from local participation in the state employee charitable campaign; and

(C) other decision unless the committee has no legal authority over the subject covered by the decision.

(q) Responsibilities of the state campaign manager.

(1) Statutory responsibilities. The state campaign manager shall fulfill the manager's statutory responsibilities as set forth in Government Code, Chapter 659, Subchapter I.

(2) Additional responsibilities. In addition to the state campaign manager's statutory responsibilities, the manager shall:

(A) develop the state employee charitable campaign plan in consultation with the state advisory committee;

(B) serve as liaison to the state policy committee, the state advisory committee, any [~~the~~] local campaign managers appointed by the state policy committee, and any [~~the~~] local employee committees appointed by the state policy committee on behalf of statewide federations or funds and eligible local charitable organizations;

(C) structure the state employee charitable campaign fairly and equitably according to the policies and procedures established by the state policy committee;

(D) provide for involvement of all statewide federations or funds, including the use of their resources, at all levels of the state employee charitable campaign;

(E) conduct the manager's responsibilities on behalf of the state employee participants in the state employee charitable campaign separately from the manager's internal operations;

(F) prepare and submit for review by the state advisory committee a single statewide campaign budget that has been prepared in cooperation with any local campaign managers appointed by the state policy committee and that includes campaign materials, staff time, and other expenses incurred for the state employee charitable campaign;

(G) establish, after consulting with the state advisory committee, the state policy committee, and any [~~the~~] local campaign managers appointed by the state policy committee, a uniform campaign reporting form to allow reporting of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager; and

(H) submit a statewide campaign report that complies with paragraph (3) of this subsection.

(3) Statewide campaign reports. A statewide campaign report shall represent a compilation of the local campaign managers' campaign reports, if any local campaign managers have been appointed by the state policy committee. The state campaign manager shall ensure that the state policy committee, the state advisory committee, and the comptroller receive the statewide campaign report not later than February 5th of the calendar year following the calendar year in which the campaign covered by the report ended. If February 5th is not a workday, then the first workday after February 5th is the deadline.

(r) Responsibilities of any local campaign managers appointed by the state policy committee.

(1) Statutory responsibilities. A local campaign manager shall fulfill the manager's statutory responsibilities as set forth in Government Code, Chapter 659, Subchapter I, along with any duties prescribed by the state policy committee under Government Code, §659.140.

(2) Additional responsibilities. In addition to a local campaign manager's statutory responsibilities and any duties prescribed by the state policy committee under Government Code, §659.140, any appointed[~~, the~~] manager shall:

(A) recruit, train, and supervise state employee volunteers;

(B) involve participating eligible local charitable organizations and statewide federations or funds in the training of state employee volunteers;

(C) consult with eligible local charitable organizations and statewide federations or funds about the operation of the state employee charitable campaign and the preparation of local campaign materials;

(D) provide eligible local charitable organizations and statewide federations or funds with the opportunity to participate in local state employee charitable campaign events and access to all records for the local campaign area;

(E) maintain campaign records for the local campaign area, including total pledges, total pledges by eligible local charitable organization and statewide federation or fund, state agencies contacted, and other records deemed necessary by the state policy committee for organization, control, and progress reporting;

(F) submit to the state campaign manager a final campaign report of designated deductions, undesignated deductions, campaign expenses, and other information deemed necessary by the state campaign manager;

(G) ensure that the state campaign manager receives the local campaign manager's final campaign report not later than January 15th of the calendar year following the calendar year in which the campaign covered by the report ended or, if January 15th is not a workday, not later than the first workday after January 15th;

(H) establish an account at a financial institution for the purpose of receiving payments from the comptroller and institutions of higher education by electronic funds transfer, warrant, or check;

(I) distribute interest accrued during a campaign year as soon as possible after December 31st to each eligible local charitable organization and statewide federation or fund in the same manner that undesignated deductions are distributed, subject to the limitation in paragraph (3) of this subsection;

(J) submit a request to the comptroller to be paid by the comptroller through electronic funds transfers under rules adopted by the comptroller, but only to the extent those transfers are initiated by the comptroller on behalf of the comptroller or other state agencies;

(K) submit a request to an institution of higher education to be paid by the institution through electronic funds transfers under rules or procedures adopted by the institution, but only to the extent those transfers are not initiated by the comptroller on behalf of the institution;

(L) reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the manager;

(M) report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received not later than the 30th day after the day on which the comptroller or the institution mailed or delivered the report;

(N) report to each eligible local charitable organization and statewide federation or fund the amount of its undesignated and designated initial distribution amounts as determined under subsection (c)(1) of this section; and

(O) report to each eligible local charitable organization and statewide federation or fund its contribution percentage as determined under subsection (j)(2) of this section.

(3) Limitation on distributions of accrued interest. A local campaign manager may not distribute accrued interest to:

(A) an eligible local charitable organization that did not receive deducted amounts through the manager during the campaign year; or

(B) a statewide federation or fund that did not receive deducted amounts through the manager during the campaign year, unless the only reason for not receiving the deducted amounts through the manager is the direct payment requirement of the second sentence of subsection (i)(1)(B) of this section.

(4) Prohibition against solicitation. A local campaign manager may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(s) Responsibilities of statewide federations or funds.

(1) Reconciliation of payment reports. A statewide federation or fund shall reconcile the payment report provided by the comptroller or an institution of higher education with the amount of deductions paid to the federation or fund.

(2) Reports of discrepancies.

(A) A statewide federation or fund shall report to the comptroller or an institution of higher education, as appropriate, each discrepancy between a payment report provided by the comptroller or an institution and the actual amount of deductions received.

(B) A report of discrepancies is due not later than the 30th day after the day on which the comptroller or the institution of higher education mailed or delivered the report.

(3) Prohibition against solicitation. A statewide federation or fund may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(t) Prohibition against certain solicitation by eligible local charitable organizations. An eligible local charitable organization may not solicit a deduction from a state employee at the employee's worksite unless the solicitation is pursuant to the state employee charitable campaign.

(u) Acceptance of authorization forms and electronic deduction authorizations by state agencies.

(1) Prohibition against accepting certain authorization forms and electronic deduction authorizations. A state agency may accept an authorization form or electronic deduction authorization only if it complies with the comptroller's requirements.

(2) Reviewing authorization forms and electronic deduction authorizations. An authorization form or electronic deduction authorization submitted by a state employee to a state agency must be reviewed by the agency's campaign coordinator to ensure that the form or electronic deduction authorization has been completed properly.

(3) Acceptance of altered authorization forms and electronic deduction authorizations. A state agency is not required to accept an authorization form or electronic deduction authorization that contains an obvious alteration without the appropriate state employee's written consent to the alteration.

(4) Review of online giving tool website and application data by agency campaign coordinator. A state agency's campaign coordinator may view the data from the online giving tool website and application to ensure that the information has been completed properly and to validate the accuracy of the information.

(v) Payment reports.

(1) Monthly submission of payment reports.

(A) An institution of higher education shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts from the institution's state employees.

(B) The comptroller shall submit a payment report each month to each local campaign manager or statewide federation or fund that has received during the month deducted amounts through the comptroller's electronic funds transfer system.

(2) Information included in payment reports.

(A) An institution of higher education's payment report must include the amount and date of each check written to or electronic

funds transfer made to a local campaign manager or a statewide federation or fund by the institution.

(B) The comptroller's payment report must include the amount and date of each electronic funds transfer made to a local campaign manager or statewide federation or fund by the comptroller.

(3) Format of payment reports. An institution of higher education's payment report must be in the format prescribed by the comptroller.

(4) Deadline for submission of payment reports.

(A) Except as otherwise provided in this subparagraph, an institution of higher education shall mail or deliver a payment report not later than the tenth workday of the month in which the institution paid the deducted amounts covered by the report. For deductions from salary or wages paid by an institution of higher education after the tenth workday of a month, the institution may include the deductions in the institution's payment report for the following month.

(B) Except as otherwise provided in this subparagraph, the comptroller shall mail or deliver a payment report not later than the fifth workday of the month in which the comptroller paid the deducted amounts covered by the report. For deductions from salary or wages paid by the comptroller after the first workday of a month, the comptroller may include the deductions in the comptroller's payment report for the following month.

(w) Complaints by state employees about coercive activity.

(1) Definition.

(A) In this section, "coercive activity" includes:

(i) a state agency or its representative pressuring a state employee to participate in a state employee charitable campaign;

(ii) a state agency or its representative inquiring about:

(I) whether a state employee has chosen to participate in a state employee charitable campaign; or

(II) the amount of a state employee's deduction except as necessary to administer the deduction;

(iii) a state agency or its representative establishing a goal for 100% of the agency's state employees to authorize a deduction;

(iv) a state agency or its representative establishing a dollar contribution goal or quota for a state employee;

(v) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding developing or using a list of state employees who did not complete an authorization form or electronic deduction authorization during a state employee charitable campaign;

(vi) a state agency, a statewide federation or fund, a local campaign manager, or a representative of the preceding using or providing to others a list of state employees who completed an authorization form or electronic deduction authorization [~~authorizations forms~~] during a state employee charitable campaign, unless the purpose of the list is to make a deduction or transmit deducted amounts to a local campaign manager or a statewide federation or fund; and

(vii) a state agency or its representative using as a factor in a performance appraisal the results of a state employee charitable campaign in a particular section, division, or other level of the agency.

(B) Notwithstanding subparagraph (A) of this paragraph, "coercive activity" does not include:

(i) the head of a state agency's participation in the customary activities associated with a state employee charitable campaign; or

(ii) the head of a state agency's demonstration of support for the campaign in newsletters or other routine communications with state employees.

(2) Submission of complaints to the comptroller. A state employee may submit a written complaint to the comptroller when the employee believes that coercive activity has occurred in a state employee charitable campaign.

(3) Investigation by the comptroller of complaints.

(A) The comptroller shall investigate a state employee's written complaint about coercive activity. The comptroller shall mail or deliver a description of the comptroller's findings about the complaint to the employee not later than the 30th day after the comptroller receives the complaint.

(B) If the comptroller finds that coercive activity has occurred, then the comptroller shall mail or deliver notice of the finding to the state policy committee not later than the 30th day after the comptroller makes the finding.

(4) Action by the state policy committee.

(A) If the state policy committee receives written notification that the comptroller has found that coercive activity has occurred, then the committee shall take appropriate action. Actions that the state policy committee may take include suspension of the person or entity that engaged in the coercive activity from participation in the state employee charitable campaign for one campaign year.

(B) A person or entity that has been suspended from the state employee charitable campaign for a campaign year may apply to the state policy committee for participation in the campaign for the next campaign year.

(x) Public junior colleges and their employees.

(1) Classification as institutions of higher education and state employees. For the purposes of this section, a public junior college is considered to be an institution of higher education and the college's employees are considered to be state employees unless the college's governing board affirmatively decides for the college not to participate in the state employee charitable contribution program.

(2) Decisions not to participate in the state employee charitable contribution program.

(A) The decision of a public junior college's governing board for the college not to participate in the state employee charitable contribution program is effective for only one fiscal year.

(B) To be valid, the decision of a public junior college's governing board for the college not to participate in the state employee charitable contribution program for a fiscal year must be made not earlier than September 1 and not later than April 1 of the preceding fiscal year.

(C) A public junior college's governing board shall ensure that the state campaign manager receives written notice of the board's decision for the college not to participate in the state employee charitable contribution program. The board's failure to comply with this requirement does not, however, invalidate that decision.

(3) Charitable deductions outside the state employee charitable contribution program.

(A) This paragraph applies to a public junior college only if the college's governing board has decided for the college not to participate in the state employee charitable contribution program.

(B) The governing board of a public junior college may allow the college's employees to authorize deductions from their salaries or wages for charitable contributions. The deductions must be voluntary.

(C) The deductions must be made in accordance with any policies adopted by the board. Except for this paragraph, this section does not apply to those deductions.

(y) Requirements for online giving tool website and application.

(1) An online giving tool website and/or application may be used by state employee to submit an electronic deduction authorization only if both the comptroller and the state policy committee have approved the online giving tool website and/or application.

(2) Restrictions on approval of online giving tool website and/or application. Neither the comptroller nor the state policy committee may approve an online giving tool website and/or application unless the electronic deduction authorization produced through the electronic online giving tool:

(A) states that statewide federations or funds and local campaign managers are required to use the percentage method to distribute a state employee's deducted amounts to eligible charitable organizations designated by the employee instead of matching deducted amounts received to actual designations;

(B) accurately describes the percentage method; and

(C) complies with the comptroller's requirements for format and substance.

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

Filed with the Office of the Secretary of State on April 1, 2016.

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Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 5. PROGRAM COMPLETION AND RELEASE

37 TAC §§380.8559, 380.8565, 380.8569

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8559, concerning Program Completion for Sentenced Offenders, §380.8565, concerning Discharge of Sentenced Offenders upon Transfer to TDCJ or Expiration of Sentence, and §380.8569, concerning Transfer of Sentenced Offenders Adjudicated for Capital Murder.

SECTION-BY-SECTION SUMMARY

The following changes will be made to each of the three rules: 1) clarify that confirmation of a major rule violation is an appropriate time for TJJD to review a sentenced offender's progress to determine whether the youth is appropriate for a recommendation for transfer to the Texas Department of Criminal Justice (TDCJ); 2) add age 16 as a time when TJJD will review each sentenced offender's progress to determine whether the youth is appropriate for a recommendation for transfer to TDCJ; 3) remove references to youth who were committed before June 9, 2007, as TJJD no longer has any such youth in its custody; 4) clarify that the notice provided to the parent/guardian, any designated advocate, and any identified victims before TJJD conducts an exit review will include the date by which written comments must be received; 5) clarify that the notice provided to the parent/guardian and any identified victim will include the date by which a request to present in-person information must be received; and 6) remove references that indicated Level I hearings may be used to confirm major rule violations, as Level I hearings are no longer used for this purpose.

In addition to the changes listed above, the amended §380.8565 and §380.8569 will: 1) clarify that when a youth receives a determinate sentence for conduct occurring in a TJJD or contract facility, time spent in high-restriction facilities on an indeterminate commitment before receiving the determinate sentence will count toward the six-month minimum stay required before TJJD is able to recommend transfer to Texas Criminal Justice Department-Correctional Institutions Division (TDCJ-CID); 2) clarify that it is a youth's *unwillingness* (rather than inability) to progress in the rehabilitation program that may contribute to TJJD's recommendation to transfer the youth to TDCJ-CID; and 3) clarify that when a hearing has been held to determine whether a youth will be transferred to adult parole or prison, TJJD is not required to send the 10-day notice of a youth's pending discharge to parties who are typically present at these hearings.

In addition to the changes listed above, the amended §380.8565 will also: 1) clarify that the rule applies to any determinate sentence, not just a youth's original determinate sentence; 2) clarify that youth in *any residential facility* (rather than just high-restriction facilities) who have not met program completion criteria and have not received court approval for transfer to TDCJ-CID must be transferred to adult parole; 3) clarify that when a youth cannot complete the minimum period of confinement by his/her 19th birthday and TJJD requests a court hearing to determine transfer to adult parole or prison, TJJD is not bound by the criteria specified earlier in the rule regarding who is appropriate for a recommendation for prison; and 4) remove the reference to TJJD's requirement to send a progress report and reentry plan to the committing court at least 30 days before the youth's release or discharge. The statute requiring TJJD to send this information does not apply to the types of discharges described in this rule. For some of the youth covered by this rule, these reports are pro-

vided in connection with events that occur earlier than the events described in this rule.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Rebecca Walters, Director of Youth Placement and Program Development, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be promoting the safety of youth, staff, and the public by being more specific about the circumstances under which TJJD staff members review sentenced offenders for the appropriateness of recommending transfer to TDCJ-CID. The amended rules will also promote safety of youth, staff, and the public by allowing all time spent in TJJD secure facilities (including time on an indeterminate commitment) to count toward the minimum length of stay required before TJJD may recommend transfer of a sentenced offender to TDCJ-CID.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or e-mail to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amendments are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.8559. Program Completion for Sentenced Offenders.

(a) Purpose. This rule establishes [~~The purpose of this rule is to establish~~] criteria and the approval process for sentenced offenders [~~offender youth~~] to qualify for release or transfer to parole by completing required programming.

(b) Applicability.

(1) This rule applies only to sentenced offenders.

(2) This rule does not apply to sentenced offenders who are:

(A) discharged due to expiration of the sentence or transferred to the Texas Department of Criminal Justice (TDCJ) by court order or by aging out of the Texas Juvenile Justice Department (TJJD). See §380.8565 of this title; or

(B) adjudicated for capital murder. See §380.8569 of this title.

(c) General Requirements.

(1) A detainer or bench warrant is not an automatic bar to earned release. TJJD releases youth to authorities pursuant to a warrant.

(2) To determine eligibility for release or transfer, TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) [~~(C)~~] when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation [~~eligibility/recommendation~~] for transfer to TDCJ-Correctional Institutions Division (TDCJ-CID) [~~TDCJ-Institutional Division (ID)~~] or TDCJ-Parole Division (TDCJ-PD); [~~(PD), on or before:~~]

~~*[(i) 18 years of age and 18 years and six months of age for youth committed on or after June 9, 2007; or]*~~

~~*[(ii) 20 years of age and 20 years and six months of age for youth committed before June 9, 2007;]*~~

(E) [~~(D)~~] within 45 days after revocation of parole, if applicable; and

(F) [~~(E)~~] at other times as appropriate, such as after a major rule violation has been confirmed through a Level II hearing.

(3) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review [~~review/interview~~] at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJD and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process and specifies the date by which a request to present in-person information must be received. Any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJD and included in the release/transfer packet.

(4) A youth [~~Sentenced offenders~~] must serve the entire minimum period of confinement applicable to the [~~their~~] committing offense in a high-restriction facility [~~high restriction facilities~~] unless:

(A) the youth is transferred to TDCJ-CID [~~TDCJ-ID~~] by the committing court. See §380.8565 of this title;

(B) the youth is approved by the committing court to attain parole status before completing [~~completion of serving~~] the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives such placement.

(d) Program Completion Criteria.

(1) A youth [~~sentenced offender~~] may be considered for release or transfer to parole [~~from a high restriction facility~~] when the following criteria have been met:

(A) no major rule violations confirmed through a Level [~~I or~~] II due process hearing within 90 days prior to the exit interview or during the approval process;

(B) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title;

(C) assignment by the Multi-disciplinary Team [~~multi-disciplinary team~~] to the highest stage in the [~~assigned~~] rehabilitation

program as described in §380.8703 of this title, which reflects that the youth:

(i) is consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;

(ii) is consistently participating in skills development groups, as reflected in the youth's individual case plan;

(iii) is consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; and

(iv) has completed a community reintegration plan, approved by the Multi-disciplinary Team [~~multi-disciplinary team~~], that demonstrates the youth's:

(I) understanding of his/her risk and protective factors;

(II) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors;

(III) identification of goals and a plan of action to achieve those goals; and

(IV) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles;

(D) participation in or completion of any statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this title;

(ii) participation in a positive behavioral interventions and supports system to the extent required under §380.9155 of this title; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order; and

(E) completion of:

(i) all but nine months of the sentence if the sentence expires before or simultaneously with the minimum period of confinement [~~or simultaneously with the minimum period of confinement~~]; or

(ii) the entire minimum period of confinement if the sentence expires after the minimum period of confinement.

(2) Youth are released to TJJD parole unless[~~, at the time~~] the youth meets program completion criteria[~~, he/she is:~~]

[~~(A)~~] within two months before his/her 19th birthday, [~~if committed to TJJD on or after June 9, 2007,~~] in which case the youth will be transferred to TDCJ-PD.[~~; or~~]

[~~(B) at least 19 years of age if committed to TJJD before June 9, 2007, in which case the youth will be transferred to TDCJ-PD.~~]

(e) Release or Transfer Approval. For sentenced offenders, the executive director or his/her designee is the final decision authority for release or transfer. The final decision authority ensures [~~will ensure~~] that the youth meets all program completion criteria and that the community re-entry/transition plan adequately addresses risk before approving the release or transfer.

(f) Loss of Release or Transfer Eligibility.

(1) Eligibility for release or transfer is lost when any of the following occurs after the exit interview:

(A) youth commits a major rule violation that is confirmed through a Level [~~I or~~] II due process hearing; or

(B) the youth's Multi-disciplinary Team [~~multi-disciplinary team~~] determines that the youth no longer meets the required rehabilitation program criteria.

(2) Except as described in paragraph (3) of this subsection, a youth who loses release or transfer eligibility will not be eligible for release or transfer until such time as the youth again meets program completion criteria and a subsequent exit review/interview confirms eligibility.

(3) If a youth is being considered for release or transfer nine months before his/her sentence completion and he/she loses eligibility for release or transfer, he/she must [~~will~~] remain in high restriction until the sentence has expired.

(g) Release or Transfer Date.

(1) TJJD holds the exit interview within 14 calendar days after the date a youth meets program completion criteria as set forth in this rule.

(2) If the youth meets program completion criteria, the youth is:

(A) released to TJJD parole within 60 calendar days after the date the youth met program completion criteria[~~,~~] unless the youth loses release eligibility, in which case the release process is re-initiated when the youth again meets program completion criteria; or

(B) transferred to TDCJ parole on or before the youth's 19th birthday.

(h) Notification.

(1) TJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJD no later than 30 days before the date of the youth's release or transfer [~~discharge~~]. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.

(2) TJJD notifies the following at least ten calendar days before the youth's release:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's parole officer;

(D) the chief juvenile probation officer in the county to which the youth is being moved; and

(E) any entity that has issued an active warrant for the youth.

§380.8565. Discharge of Sentenced Offenders upon Transfer to TDCJ or Expiration of Sentence.

(a) Purpose. This rule establishes [~~The purpose of this rule is to establish~~] criteria and an approval process for:

(1) requesting court approval to transfer sentenced offenders to adult prison; and

(2) discharging sentenced offenders:

(A) whose sentences have expired; or

(B) who did not previously qualify [~~have not qualified~~] for release or transfer by [~~based on~~] completing required programming.

(b) Applicability.

(1) This rule applies only to the disposition of a youth's [~~the original~~] determinate sentence(s) [~~sentence~~].

(2) This rule applies only to sentenced offenders.

(3) This rule does not apply to:

(A) sentenced offenders who qualify for release or transfer to parole by completing [~~due to completion of~~] required programming. See §380.8559 of this title; or

(B) sentenced offenders adjudicated for capital murder. See §380.8569 of this title.

(c) General Requirements.

(1) By law, a sentenced offender is [~~offenders are~~] transferred from the custody of the Texas Juvenile Justice Department (TJJD) no later than the youth's[~~:~~]

[~~(A)~~] 19th birthday. [~~for youth committed to TJJD on or after June 9, 2007; or~~]

[~~(B) 21st birthday for youth committed to TJJD before June 9, 2007.~~]

(2) A youth [~~Youth~~] must serve the entire minimum period of confinement that applies [~~applicable~~] to the [~~their~~] committing offense in a high-restriction facility [~~high restriction facilities~~] unless:

(A) the youth is transferred by the committing court to Texas Department of Criminal Justice - Correctional Institutions [~~Institutional~~] Division (TDCJ-CID) [~~(TDCJ-ID) in accordance with legal requirements or committing court approval~~];

(B) the youth is approved by the committing court to attain parole status before completing [~~completion of~~] the minimum period of confinement;

(C) the youth's sentence expires before the minimum period of confinement expires; or

(D) the executive director waives such placement.

(3) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) [~~(C)~~] when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation [~~eligibility/recommendation~~] for transfer to TDCJ-CID [~~TDCJ-ID~~] or to the Texas Department of Criminal Justice - Parole Division (TDCJ-PD)~~;~~ [~~on or before:~~]

~~f(i)~~ ~~18 years of age and 18 years and six months of age for youth committed on or after June 9, 2007; or~~]

~~f(ii)~~ ~~20 years of age and 20 years and six months of age for youth committed before June 9, 2007;~~]

(E) [~~(D)~~] within 45 days after revocation of parole, if applicable; and

(F) [~~(E)~~] at other times as appropriate, such as after a major rule violation has been confirmed through a Level II hearing.

(4) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review [~~review/interview~~] at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJD and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process and specifies the date by which a request to present in-person information must be received. Any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJD and included in the release [~~release/transfer~~] packet.

(5) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth [~~he/she~~] is transferred to TDCJ~~;~~ or

(B) the youth's [~~his/her~~] sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described [~~specified~~] in §380.8525 of this title.

(d) Transfer Criteria.

(1) Transfer to TDCJ-CID [~~TDCJ-ID~~] for Youth Whose Conduct Occurs While on Parole Status. TJJD may request a juvenile court hearing to recommend transfer of a youth to TDCJ-CID [~~TDCJ-ID~~] if all of the following criteria are met:

(A) the youth's parole has been revoked or the youth has been adjudicated or convicted of a felony offense occurring while on parole status;

(B) the youth is at least age 16;

(C) the youth has not completed his/her sentence; and

(D) the youth's conduct indicates that the welfare of the community requires the transfer.[~~; and~~]

[~~(E) the conduct leading to parole revocation, adjudication, or conviction occurred while on parole status.~~]

(2) Transfer to TDCJ-CID [~~TDCJ-ID~~] for Youth Whose Conduct Occurs While in a High-Restriction Facility [~~High Restriction Facilities~~]. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction [~~high restriction~~] facility to TDCJ-CID [~~TDCJ-ID~~] if the following criteria are met:

(A) the youth is at least age 16; and

(B) the youth has spent at least six months in high-restriction [~~high restriction~~] facilities, which is counted as follows:[~~; and~~]

(i) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(ii) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(C) the youth has not completed his/her sentence; and

(D) the youth meets at least one of the following behavior criteria:

(i) the youth has committed a felony or Class A misdemeanor while assigned to a residential facility; or

(ii) the youth has committed major rule violations as confirmed through [~~though~~] a Level [~~I or~~] II due process hearing on three or more occasions; or

(iii) the youth has engaged in conduct that has resulted in [~~chronic disruption of program, which is defined as~~] at least

five Security Program [security program] admissions or extensions in one month or ten in three months (see §380.9740 of this title for information on the Security Program [security program]); or

(iv) the youth has demonstrated an unwillingness [inability] to progress in his/her rehabilitation program due to persistent non-compliance with objectives; and

(E) alternative interventions have been tried without success; and

(F) the youth's conduct indicates that the welfare of the community requires the transfer.

(3) Transfer to TDCJ-PD for Youth in Residential [High Restriction] Facilities. A youth in a residential [high restriction] facility who has not met program completion [completed transfer] criteria in §380.8559 of this title and who has not received court approval for transfer to TDCJ-CID [TDCJ-ID] must be transferred to TDCJ-PD to complete his/her sentence[:]

[(A)] no later than the youth's 19th birthday.[, for youth committed on or after June 9, 2007; or]

[(B) no later than the youth's 21st birthday, for youth committed before June 9, 2007.]

(4) Transfer to TDCJ-PD for Youth on TJJD Parole. A youth on TJJD parole who has not completed his/her sentence must be transferred to TDCJ-PD no later than the youth's[:]

[(A)] 19th birthday.[, for youth committed on or after June 9, 2007; or]

[(B) 21st birthday, for youth committed before June 9, 2007.]

(e) [(5)] Transfer Recommendation for Youth [Committed on or after June 9, 2007,] Who Will Not Complete the Minimum Period of Confinement before [Before] Age 19. TJJD requests a court hearing for any youth who cannot complete his/her minimum period of confinement by his/her 19th birthday. The purpose of the hearing is [For a youth sentenced on or after June 9, 2007 who will not have completed his/her minimum period of confinement upon reaching his/her 19th birthday, TJJD requests a court hearing] to determine whether the youth will be transferred to TDCJ-CID [TDCJ-ID] or to TDCJ-PD. Notwithstanding the criteria in subsection (d)(2) of this section, TJJD considers the following factors in forming a recommendation for the committing court:

(1) [(A)] length of stay in TJJD;

(2) [(B)] youth's progress in the rehabilitation program;

(3) [(C)] youth's behavior while in TJJD;

(4) [(D)] youth's offense/delinquent history; and

(5) [(E)] any other relevant factors, such as:

(A) [(i)] risk factors and protective factors the youth possesses as identified in his/her psychological evaluation; and

(B) [(ii)] the welfare of the community.

(f) [(e)] Discharge Criteria. TJJD discharges youth from its jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court, unless the youth is under concurrent commitment orders as described in §380.8525 of this title; or

(2) the youth has been transferred to TDCJ-CID [TDCJ-ID] under court order or transferred to TDCJ-PD.

(g) [(f)] Decision Authority for Approval to Transfer.

(1) TJJD does not transfer youth from a high-restriction [high restriction] facility to TDCJ-PD until the executive director or his/her designee determines the youth's community re-entry/transition plan adequately addresses risk factors.

(2) When a determination has been made that the youth meets [transfer] criteria for requesting a hearing for transfer to TDCJ-CID [TDCJ] or cannot complete his/her minimum period of confinement before age 19 [the expiration of TJJD's jurisdiction], the executive director or his/her designee approves the staff request for a hearing by the committing juvenile court.

(3) The committing juvenile court is the final decision authority for transferring a youth to TDCJ-CID [TDCJ-ID].

(h) [(g)] Notification.

[(1) For youth who will not be returning to court for a transfer hearing, TJJD provides the committing juvenile court a copy of the youth's community re-entry/transition plan and a report concerning the youth's progress while committed to TJJD no later than 30 days before the date of the youth's release or discharge. Additionally, if on release the youth is placed in another state or a county other than a county served by the committing juvenile court, TJJD provides the community re-entry/transition plan and progress report to a juvenile court having jurisdiction over the county of the youth's residence.]

(1) [(2)] TJJD notifies the following at least ten calendar days before the youth's discharge due to expiration of sentence or transfer to TDCJ-PD without a transfer/release hearing:

(A) the committing juvenile court;

(B) the prosecuting attorney;

(C) the youth's TJJD parole officer;

(D) the [county] chief juvenile probation officer in the county to which the youth is being moved; and

(E) any entity that has issued an active warrant for the youth.

(2) TJJD notifies any entity that has issued an active warrant for the youth at least ten calendar days before the youth's transfer to TDCJ-PD resulting from a transfer/release hearing or a youth's transfer to TDCJ-CID.

§380.8569. Transfer of Sentenced Offenders Adjudicated for Capital Murder.

(a) Purpose. This rule establishes [The purpose of this rule is to establish] criteria and the approval process for transferring sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice-Correctional Institutions [Institutional] Division (TDCJ-CID) [(TDCJ-ID)].

(b) Applicability. This rule applies only to sentenced offenders [offender youth] adjudicated for capital murder.

(c) General Provisions.

(1) A detainer or bench warrant is not an automatic bar to earned release. The Texas Juvenile Justice Department (TJJD) releases youth to authorities pursuant to a warrant.

(2) TJJD reviews each youth's progress:

(A) six months after admission to TJJD;

(B) when the minimum period of confinement is complete;

(C) when the youth becomes 16 years of age;

(D) [~~(C)~~] when the youth becomes 18 years of age and again at 18 years and six months of age to determine eligibility or make a recommendation [~~eligibility/recommendation~~] for transfer to TDCJ-CID [~~TDCJ-ID~~] or TDCJ-PD; and[~~, on or before:~~]

~~*(i)* 18 years of age and 18 years and six months of age for youth committed on or after June 9, 2007; or~~]

~~*(ii)* 20 years of age and 20 years and six months of age for youth committed before June 9, 2007; and~~]

(E) [~~(D)~~] at other times as appropriate, such as after a major rule violation has been confirmed through a Level II hearing.

(3) TJJD notifies the youth, the youth's parent/guardian, any designated advocate for the youth, and any identified victim(s) of a pending exit review [~~review/interview~~] at least 30 days before the date of the review. The notification informs the recipients that they have the opportunity to submit written comments to TJJD and specifies the date by which the comments must be received. The notification also informs the parent/guardian and any identified victim(s) that they may present information in person during the youth's exit review process and specifies the date by which a request to present in-person information must be received. Any information received from a youth's family members, victims, local officials, staff, or the general public is considered by TJJD and included in the transfer [~~release/transfer~~] packet.

(4) Youth whose committing offense is capital murder must serve the entire minimum period of confinement applicable to the youth's committing offense in high-restriction [~~high restriction~~] facilities unless:

(A) the youth is transferred by the committing court to TDCJ-CID [~~TDCJ-ID in accordance with legal requirements or committing court approval~~]; or

(B) the youth is approved by the committing court to attain parole status before completion of the minimum period of confinement; or

(C) the youth's sentence expires before the minimum period of confinement expires.

(5) A youth who has not received court approval to transfer to TDCJ-CID [~~TDCJ-ID~~] must be transferred to TDCJ-PD no later than [~~the~~] age 19 [~~at which TJJD jurisdiction ends~~].

(6) TJJD jurisdiction is terminated and a youth is discharged when:

(A) the youth [~~he/she~~] is transferred to TDCJ; or

(B) the youth's [~~his/her~~] sentence has expired, except when the youth is committed to TJJD under concurrent determinate and indeterminate commitment orders as described [~~specified~~] in §380.8525 of this title.

(d) Program Completion Criteria. TJJD reviews youth for program completion and possible transfer to TDCJ-PD when the following criteria have been met:

(1) no major rule violations confirmed through a Level [~~I or~~] II due process hearing within 90 days before the exit interview or during the approval process; and

(2) completion of at least three years toward the minimum period of confinement; and

(3) participation in or completion of assigned specialized treatment programs or curriculum as required under §380.8751 of this title; and

(4) assignment by the Multi-disciplinary Team [~~multi-disciplinary team~~] to the highest stage in the [~~assigned~~] rehabilitation program as described in §380.8703 of this title, which reflects that the youth:

(A) is consistently participating in academic and workforce development programs commensurate with abilities as reflected in the youth's educational plan;

(B) is consistently participating in skills development groups, as reflected in the youth's individual case plan;

(C) is consistently demonstrating learned skills, as reflected in the documentation of the youth's behavior; and

(D) has completed a community reintegration plan[~~,~~] approved by the Multi-disciplinary Team [~~multi-disciplinary team,~~] that demonstrates the youth's:

(i) understanding of his/her risk and protective factors; [~~and~~]

(ii) development of skills, abilities, and knowledge to reduce risk factors and increase protective factors; [~~and~~]

(iii) identification of goals and a plan of action to achieve those goals; and

(iv) identification of obstacles that may hinder successful re-entry and plans to deal with those obstacles; and

(E) participation in or completion of statutorily required rehabilitation programming, including but not limited to:

(i) participation in a reading improvement program for identified youth to the extent required under §380.9155 of this title;

(ii) participation in a positive behavioral interventions and supports system to the extent required under §380.9155 of this title; and

(iii) completion of at least 12 hours of a gang intervention education program, if required by court order.

(e) Youth Who Do Not Meet Program Completion Criteria. If a [~~the~~] youth does not meet the criteria in subsection (d) of this section, TJJD recommends transfer to TDCJ-PD or TDCJ-CID [~~TDCJ-ID~~] to the committing juvenile court and considers [~~will consider~~] the following factors in forming its recommendation:

(1) length of stay in TJJD;

(2) youth's progress in the rehabilitation program;

(3) youth's behavior while in TJJD;

(4) youth's offense/delinquent history; and

(5) any other relevant factors, such as:

(A) risk factors and protective factors the youth possesses, as identified in his/her psychological evaluation; and

(B) the welfare of the community.

(f) Transfer to TDCJ-CID before [~~TDCJ-ID Before~~] Termination of TJJD's Jurisdiction. TJJD may request a juvenile court hearing to recommend transfer of a youth in a high-restriction [~~high restriction~~] facility to TDCJ-CID [~~TDCJ-ID~~] if the following criteria are met:

(1) the youth is at least age 16; and

(2) the youth has spent at least six months in high-restriction [~~high restriction~~] facilities, which is counted as follows:

(A) if the youth received a determinate sentence for conduct that occurred in the community, the six months begins upon admission to TJJD; or

(B) if the youth received a determinate sentence for conduct that occurred in a TJJD or contract facility, the six months begins upon the youth's initial admission to TJJD, regardless of whether the initial admission resulted from a determinate or indeterminate commitment; and

(3) the youth has not completed his/her sentence; and

(4) the youth meets at least one of the following behavior criteria:

(A) the youth has committed a felony or Class A misdemeanor while assigned to a residential facility; or

(B) the youth has committed major rule violations as confirmed through a Level [~~I or~~] II due process hearing on three or more occasions; or

(C) the youth has engaged in conduct that has resulted in [~~chronic disruption of program, which is defined as~~] at least five Security Program [~~security program~~] admissions or extensions in one month or ten in three months (see [~~See~~] §380.9740 of this title for information on the Security Program [~~security program.~~]); or

(D) the youth has demonstrated an unwillingness [~~inability~~] to progress in his/her rehabilitation program due to persistent non-compliance with objectives; and

(5) alternative interventions have been tried without success; and

(6) the youth's conduct indicates that the welfare of the community requires the transfer.

(g) Decision Authority for Approval to Transfer.

(1) No later than five months before a youth reaches [~~the~~] age 19, [~~at which TJJD's jurisdiction ends,~~] the executive director or his/her designee must:

(A) determine whether the youth meets criteria under this rule for transfer to TDCJ-PD or transfer to TDCJ-CID [~~TDCJ-ID~~]; and

(B) approve the staff request for a hearing by the committing juvenile court to request transfer of the youth to TDCJ-PD or TDCJ-CID [~~TDCJ-ID~~].

(2) The committing juvenile court is the final decision authority for transferring a youth to TDCJ-PD or TDCJ-CID [~~TDCJ-ID~~].

(h) Notification. TJJD notifies any entity that has issued an active warrant for the you that least ten calendar days before the youth's transfer. [~~TJJD notifies the following at least ten calendar days before the youth's transfer:~~]

[~~(1) the committing juvenile court;~~]

[~~(2) the prosecuting attorney;~~]

[~~(3) the youth's parole officer;~~]

[~~(4) the chief juvenile probation officer in the county to which the youth is being moved; and~~]

[~~(5) any entity that has issued an active warrant for the youth.~~]

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601448
Jill Mata
General Counsel
Texas Juvenile Justice Department
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 490-7014

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CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.8707, concerning Furloughs, and §380.9161, concerning Youth Employment and Work.

SECTION-BY-SECTION SUMMARY

The amended §380.8707 will add off-campus employment to the list of reasons an administrative furlough may be granted. The amended rule will also clarify that youth may be granted an administrative furlough for *health care* services (rather than medical services). Additionally, the rule will no longer include a prohibition on granting furloughs to youth assigned to emergency shelters.

The amended §380.9161 will add individualized skills development programs to the types of uncompensated work listed in the rule. These programs may include tasks incidental to facility operations and/or assignments related to developing job skills or obtaining industry certifications. Youth who demonstrate sustained improvement may be eligible for incentives, which may include minimal monetary awards. The amended rule will also clarify that a youth must meet established criteria and apply for a specific work assignment in order to participate in the paid on-campus work program. Additionally, the rule will clarify that the requirement for each facility to maintain and implement written procedures is not limited to the paid on-campus work program. Each facility must have written procedures for all types of compensated work programs, including on-campus work and off-campus work.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections.

PUBLIC BENEFITS/COSTS

Rebecca Walters, Director of Youth Placement and Program Development, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be promotion of successful community reentry by allowing youth with high school diplomas or GEDs to spend more time developing job skills and social skills and obtaining employment experience while in a secure TJJD facility.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or e-mail to policy.proposals@tjjd.texas.gov.

SUBCHAPTER B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §380.8707

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also proposed under Texas Human Resources Code §244.005, which authorizes TJJD to permit a committed child liberty under supervision on conditions TJJD believes are conducive to acceptable behavior and to order the child's confinement under conditions TJJD believes are best designed for the child's welfare and the interests of the public.

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

§380.8707. Furloughs.

(a) Purpose. This rule establishes [~~The purpose of this rule is to establish~~] the conditions under which a youth may be furloughed while in any residential placement.

(b) Definitions. Furlough--an authorized absence from an assigned residential facility for a specific purpose and for a limited period of time.

(c) General Provisions.

(1) Youth in a residential facility may be granted the following types of furloughs.

(A) Emergency. An emergency furlough may be granted when an emergency situation exists in the youth's family that, under normal circumstances, would require his/her presence as a family member.

(B) Administrative. An administrative furlough may be granted for programmatic reasons, such as [~~including~~] pre-placement visits to residential programs, home visits, health care [~~and medical~~] services, or, for youth in high-restriction facilities, off-campus employment.

(C) Bench warrant. A bench-warrant furlough is granted when a bench warrant is served on a youth and custody is transferred to the judicial jurisdiction issuing the warrant.

(D) Return to court. A return-to-court furlough is granted when a determinate sentenced offender leaves a residential facility for a court appearance to determine disposition as required by law.

[~~(2) Administrative furloughs are not permitted for youth assigned to placement in emergency shelters.~~]

(2) [~~(3)~~] Administrative furloughs to a home that has been disapproved or is pending a home evaluation are not permitted.

(3) [~~(4)~~] Emergency and administrative furloughs are subject to certain restrictions based [~~that depend~~] on a youth's custody and supervision rating. See §380.9707 of this title for more information.

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

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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SUBCHAPTER C. PROGRAM SERVICES
DIVISION 3. YOUTH EMPLOYMENT AND WORK

37 TAC §380.9161

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The amended section is also proposed under Texas Human Resources Code §244.005, which authorizes TJJD to permit a committed child liberty under supervision on conditions TJJD believes are conducive to acceptable behavior and to order the child's confinement under conditions TJJD believes are best designed for the child's welfare and the interests of the public.

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

§380.9161. Youth Employment and Work.

(a) Purpose. This rule provides [~~The purpose of this rule is to provide~~] opportunities for compensated and uncompensated work to allow youth in residential facilities to experience the responsibilities and rewards of constructive work.

(b) Applicability. This rule applies to residential [~~high restriction and medium restriction~~] facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) General Provisions.

(1) Youth are not permitted to perform any work prohibited by state or federal regulations or statutes pertaining to child labor.

(2) Repetitive, purposeless, and degrading make-work is prohibited.

(3) Training and work programs use the advice and assistance of labor, business, and industrial organizations where applicable.

(4) Due to the short length of stay and the intent of the program, orientation and assessment units do not provide for any youth work programs other than routine housekeeping chores.

(5) TJJD does not discriminate against youth on the basis of race, color, national origin, sex, religion, disability, or genetic information in providing opportunities for uncompensated and compensated work.

(d) Uncompensated Work.

(1) Youth [~~in TJJD facilities~~] may be required to do the following kinds of work without compensation:

(A) assignments that [~~which~~] are part of an agency educational curriculum (i.e., vocational training);

(B) tasks performed as community service; and/or

(C) routine housekeeping chores that [~~which~~] are shared by all youth in the facility, including basic facility maintenance.

(2) Youth may volunteer to participate in work and training opportunities without compensation as part of an individualized skills development program. The work and training opportunities may include, but are not limited to, tasks incidental to facility operations and assignments related to developing job skills or obtaining industry certifications. Youth who participate in a skills development program and demonstrate sustained improvement may be eligible for incentives, which may include minimal monetary awards.

(3) [~~(2)~~] A youth [~~Youth in TJJD facilities~~] may volunteer to perform work without compensation as restitution for damage he/she has caused [~~done by youth~~].

(e) Compensated Work.

(1) Each facility maintains and implements written procedures for operating compensated work programs that provide youth with training and employment experience.

(2) [~~(1)~~] Youth who meet established criteria may be paid for performing tasks incidental to facility operations if such employment is part of the youth's reentry plan. These [~~Youth~~] work assignments must be applied for and [~~at all TJJD-operated facilities~~] are governed by standardized job descriptions and guidelines. [~~Each facility implements procedures for operating campus work programs that provide youth with training and employment experience.~~]

(3) [~~(2)~~] TJJD may operate a Prison Industry Enhancement Certification Program (PIECP) in accordance with Texas Human Resources Code Chapter 246 and Texas Government Code Chapter 497. Youth who participate in a PIECP are paid no less than the federal minimum wage.

(4) [~~(3)~~] Certain youth may qualify for off-campus employment. Such youth must be paid in accordance with federal wage laws. [~~Youth working in the community are paid no less than the federal minimum wage.~~]

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

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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SUBCHAPTER C. PROGRAM SERVICES
DIVISION 4. HEALTH CARE SERVICES

37 TAC §380.9197

The Texas Juvenile Justice Department (TJJD) proposes amendments to §380.9197, concerning HIV/AIDS.

In accordance with House Bill 1595 enacted by the 84th Texas Legislature, the amended rule will include a provision stating that HIV testing may be performed on a youth when the testing is compelled by a court order following a request made by TJJD staff in accordance with Texas Code of Criminal Procedure Article 18.22.

The amended rule will also reflect that TJJD staff who request testing of a youth under Texas Health and Safety Code §81.050 or Texas Code of Criminal Procedure Article 18.22 are entitled to receive the results of the test from the entity specified in the applicable statute.

Additionally, the rule will clarify that: 1) *only TJJD-contracted health care staff* are authorized to release or disclose HIV test results or a youth's HIV/AIDS status to the individuals specified in the rule when the testing is conducted by TJJD; and 2) HIV testing may be performed on a youth when the testing is compelled by a Texas *Department of State Health Services (DSHS) order* following a request made by TJJD staff in accordance with Texas Health and Safety Code §81.050. Previously, the rule referred only to testing compelled by a court order under this statute.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined that for each year of the first five years the amended section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

PUBLIC BENEFITS/COSTS

Dr. Tushar Desai, Medical Director, has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be the availability of an up-to-date rule that reflects all statutes relating to compelling a youth to be tested for HIV following an incident of occupational exposure to blood or other potentially infectious material.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this section.

PUBLIC COMMENTS

Comments on the proposal may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or e-mail to policy.proposals@tjjd.texas.gov.

STATUTORY AUTHORITY

The amended section is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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

§380.9197. HIV/AIDS.

(a) Purpose. This rule provides for a safe and healthy environment for youth in Texas Juvenile Justice Department (TJJD) residential facilities by offering HIV/AIDS education, testing, and counseling/treatment and by ensuring compliance with confidentiality and reporting laws. Each youth is treated equally, and every youth's right to privacy is respected.

(b) Definitions.

(1) AIDS--Acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention (CDC).

(2) HIV--Human immunodeficiency virus.

(3) Test Result--Any statement indicating that an identifiable individual has or has not been tested for HIV infection, antibodies

to HIV, or infection with any other probable causative agent of AIDS. This includes a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody.

(c) Testing.

(1) Testing for HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS is part of routine laboratory testing performed when a youth is admitted to TJJD and does not require a specific consent form.

(2) Youth have the right to refuse HIV testing in writing, including routine HIV testing performed during admission, except as provided by law [~~bylaw~~].

(3) HIV testing is not performed routinely as a result of an assault.

(4) HIV testing may be performed on a youth only when:

(A) the youth is admitted to TJJD;

(B) the testing is requested by the youth and/or the testing is performed with the youth's consent after his/her admission to TJJD;

(C) the testing is compelled by a Texas Department of State Health Services (DSHS) order or court order following a request made by TJJD staff in accordance with §81.050 of the Texas Health and Safety Code; [~~§81.050 and agency policy relating to occupational exposure to reportable diseases, including HIV infection and AIDS; and/or~~]

(D) the testing is compelled by a court order following a request made by TJJD staff in accordance with Article 18.22 of the Texas Code of Criminal Procedure; and/or

(E) [~~(D)~~] the testing is directed by a warrant obtained by the TJJD Office of Inspector General or other law enforcement entity.

(5) Blood may be collected for HIV testing only by nurses, medical providers, or DSHS [~~the Texas Department of State Health Services (DSHS)~~] or its local testing designee.

(6) Post-test counseling is provided for youth with positive HIV test results. Pre-test counseling is provided for any HIV test conducted after admission to TJJD.

(d) Confidentiality.

(1) HIV test results or a youth's HIV/AIDS status are confidential and may [~~not~~] be released or disclosed only by TJJD-contracted health care staff and only [~~except~~] to:

(A) [~~(1)~~] the TJJD medical director;

(B) [~~(2)~~] the TJJD director of nursing;

(C) [~~(3)~~] a physician, nurse, or other health care personnel who has a legitimate need to know the information to provide for the youth's health and welfare;

(D) [~~(4)~~] the youth's parent/guardian if the youth is under [~~age~~] 18 years of age or with the youth's consent if the youth is at least 18 years of age;

(E) [~~(5)~~] any medical professional with a signed release from the youth or the youth's parent/guardian, as appropriate. The written consent must state that HIV test results are to be released; or

[~~(6) a TJJD employee for a result obtained in accordance with Health and Safety Code §81.050 and subsection (e)(4)(C) of this section; or~~]

(F) [~~(7)~~] any person with a right pursuant to law to obtain the information.

(2) TJJD staff who request testing in accordance with §81.050 of the Texas Health and Safety Code or Article 18.22 of the Texas Code of Criminal Procedure have a right to receive the test results from the entity specified in the applicable statute.

(e) Reporting. As required by state law, TJJD reports any AIDS cases or the HIV-positive [~~HIV positive~~] status of a youth diagnosed by a physician in accordance with CDC standards to the appropriate DSHS authority through the facility medical provider.

(f) Housing. HIV-positive [~~HIV positive~~] youth are not segregated from the general population based solely on positive HIV status. Housing assignments are made in accordance with §380.8524 of this title.

(g) Treatment. HIV-positive [~~HIV positive~~] youth are referred immediately to appropriate health care facilities or specialists for further evaluation, treatment, and counseling.

(h) Access to Services. Youth in TJJD facilities are not denied equal access to appropriate medical services because of their HIV/AIDS status.

(i) Education.

(1) TJJD provides educational [~~education~~] information to youth regarding HIV/AIDS as follows.

(A) All youth participate in an educational [~~education~~] session when admitted to TJJD.

(B) Education may continue as part of the academic program.

(C) Medical staff educate youth as indicated and/or as requested.

(2) HIV/AIDS education for youth is based upon current, accurate, scientific information provided by officially recognized authorities on public health. Information is communicated in a manner that youth comprehend and that is sensitive to cultural and other differences.

(3) Educational [~~Education~~] programs address topics including, but not limited to:

(A) disease and disease process;

(B) signs and symptoms;

(C) modes of HIV transmission, including high-risk and criminal behaviors that are potential risks for HIV transmission during confinement and after release;

(D) methods of preventing HIV transmission; and

(E) confidentiality of medical information and the civil and criminal penalties for failing to comply.

(j) Training.

(1) All TJJD direct-care staff members receive [~~receives~~] training initially during orientation and annually thereafter.

(2) Staff at TJJD district offices and Central [~~Austin~~] Office receive educational information annually.

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

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

The Texas Juvenile Justice Department (TJJD) proposes amendments to the following rules in Chapter 385, Subchapters B and C: §385.8117 (Private Real Property Rights Affected by Governmental Action), §385.8134 (Notice of Youth Confessions of Child Abuse), §385.8135 (Rights of Victims), §385.8145 (Volunteers and Volunteer Council), §385.8183 (Advocacy and Support Group Access), §385.9959 (Transportation of Youth), and §385.9975 (State Inscription).

SECTION-BY-SECTION SUMMARY

The amended §385.8117 will clarify that the TJJD staff member proposing a governmental action is responsible for the actions described in the rule. The rule will also clarify that the definitions of terms used in the rule can be found in the Private Real Property Rights Preservation Act. Additionally, the amendment will remove unnecessary language concerning public information.

The amended §385.8134 will clarify that the rule includes confessions of child abuse made by youth who are on TJJD parole. The rule will also clarify that the staff member or volunteer to whom the confession was made is responsible for making the report to the appropriate agency and for informing his/her supervisor that the report was made. Additionally, the amendment will remove language that established separate procedures for reporting certain kinds of alleged abuse or neglect in order to clarify that all confessions of abuse or neglect under this rule must be reported in the same manner, consistent with state law.

The amended §385.8135 will clarify that a victim may receive information and notification concerning a youth's transfer to the institutions division of TDCJ, in addition to the parole division of TDCJ. The rule will also add the following to the list of items TJJD staff may reveal to a victim who has requested information: 1) the youth's physical address if the youth is living at a TJJD residential placement; and 2) information about and an invitation to participate in TJJD's Special Services Committee or Release Review Panel review. Additionally, the amendment will add that staff may not reveal to the victim the name of a youth's new location if that location is only for mental health treatment.

The amended §385.8145 will add that a qualified community relations coordinator oversees the volunteer program at each TJJD-operated facility and parole office. The rule will also clarify the various steps involved in the screening and application process (i.e., criminal background check, fingerprints, personal character references, and an interview) for volunteers. Additionally, the amendment will add that every TJJD-operated residential facility and parole office must use volunteers to enhance rehabilitation efforts for youth.

The amended §385.8183 will be expanded to grant social services providers access to residential facilities. The rule will also add a definition for social services providers. Additionally, the amendment will clarify that the rule applies to all residential facilities operated by TJJD.

The amended §385.9959 will: 1) add that requests for transportation are submitted via email to the Centralized Placement Unit and the transportation unit coordinator. These requests are approved by the sending chief local administrator or designee following completion of any due process required for youth movement; 2) clarify when the Transportation Unit is responsible for transporting a youth; 3) add that when a youth is transported between residential facilities operated by TJJD, staff also transport the youth's case file, if available; and 4) add that if transportation is not provided or coordinated by the Transportation Unit, the sending facility arranges and, if necessary, pays for transportation of a youth to a placement or home.

The amended §385.9975 will add a new category to the list of TJJD vehicles that are exempt from the requirement to bear the state inscription. The new category is for vehicles primarily used as part of the agency pool that are available for use by various personnel in support of agency operations. The rule will also no longer include the requirement that a vehicle must be used for *extended travel* away from staff members' home base to qualify for the state-inscription exemption.

RULE REVIEW

Simultaneously with these proposed rulemaking actions, TJJD also publishes this notice of intent to review §§385.8117, 385.8134, 385.8135, 385.8145, 385.8183, 385.9959, and 385.9975 as required by Texas Government Code §2001.039. Comments on whether the reasons for originally adopting these rules continue to exist may be submitted to TJJD by following the instructions provided later in this notice.

FISCAL NOTE

Mike Meyer, Chief Financial Officer, has determined for each year of the first five years the amended sections are in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the sections. Although the proposed §385.9959 includes a new provision establishing that TJJD facilities may pay for transportation of a youth to his/her next placement when the TJJD Transportation Unit is unable to transport the youth, there is no significant fiscal impact associated with the updated section as it merely codifies current practice.

PUBLIC BENEFITS/COSTS

Chelsea Buchholtz, Chief of Staff, has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated as a result of administering the sections will be the availability of rules that have been updated to conform to current laws and to more accurately reflect TJJD's current operational practices.

Another anticipated public benefit for §385.8183 is the promotion of rehabilitation by providing social services providers with increased access to TJJD facilities.

Mr. Meyer has also determined that there will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these sections.

PUBLIC COMMENTS

Comments on the proposal and/or rule review may be submitted within 30 days after publication of this notice to Steve Roman, Policy Coordinator, Texas Juvenile Justice Department, P.O. Box 12757, Austin, Texas 78711 or email to policy.proposals@tjjd.texas.gov.

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §§385.8117, 385.8134, 385.8135, 385.8145, 385.8183

STATUTORY AUTHORITY

Section 385.8117 is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. Additionally, §385.8117 is proposed in accordance with direction from the Texas Attorney General, who has established guidelines under Texas Government Code §2007.041 that direct governmental entities to institute their own specific procedures for making an analysis of whether a proposed action results in a taking under the Private Real Property Rights Preservation Act.

Section 385.8134 is proposed under Texas Family Code §261.105, which requires TJJD to adopt rules for identifying a report made to TJJD that is appropriate to refer to the Department of Family and Protective Services or a law enforcement agency for investigation.

Sections 385.8135 and 385.8145 are proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 385.8183 is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. Section 385.8183 is also proposed under Texas Human Resources Code §242.056, which requires TJJD to allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, or victims of sexual assault to provide on-site information, support, and other services for children confined in TJJD facilities.

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

§385.8117. Private Real Property Rights Affected by Governmental Action.

(a) Purpose. This [~~The purpose of this~~] rule establishes [~~is to establish~~] procedures for [~~whereby~~] the Texas Juvenile Justice Department (TJJD) to determine [~~agency determines~~] if private real property rights are affected by proposed governmental action to be taken by TJJD [~~TYC~~].

(b) Responsibility. The TJJD staff member proposing a governmental action is responsible for the actions described herein.

(c) Definitions. Definitions pertaining to this rule are in the Private Real Property Rights Preservation Act (the Act), Chapter 2007 of the Texas Government Code.

(d) [~~(b)~~] Categorical Determination. [~~Categorical Determinations that no private real property interests are affected by the proposed governmental action obviates need for further compliance with the Private Real Property Preservation Act (Chapter 2007 Government Code).~~]

(1) Activities related to the following, [~~The following activities~~] and the programs, policies, rules, or regulations promulgated to implement them, do not affect private real property rights [~~interests~~]:

(A) [~~activities related to~~] youth care and treatment;

(B) [~~activities related to~~] facility operations, maintenance, and construction;

(C) [~~activities related to~~] personnel management; and

(D) [~~activities related to~~] purchase of goods and services.[~~;~~]

(2) If the proposed governmental [~~government~~] action falls within one of the above categories, further compliance with the Act is not required and a Takings Impact Assessment (TIA) must not be initiated [~~there is no need to proceed further with the TIA process~~].

(3) If the proposed governmental action does not fall within one of the above categories, TJJD must make [~~it is determined whether private real property interests are affected by the proposed governmental action. This is accomplished by making~~] a No Private Real Property Impact Determination to determine if a TIA is required.

(e) [~~(c)~~] [~~Making a~~] No Private Real Property Impact (No PRPI) Determination. [~~If it is determined that there are no private real property interests impacted by a specific governmental action, the need for any further compliance with the Private Real Property Preservation Act (Chapter 2007 Government Code) is obviated.~~]

(1) A No PRPI [~~Private Real Property Impacts~~] Determination [~~(No PRPI Determination)~~] is made [~~determined~~] by finding [~~answering the following question: Does~~] the proposed governmental action does not [~~Covered Governmental Action~~] result in a burden on private real property according to the procedures in subsection (e)(2) of this section. [~~Private Real Property as that term is defined in the Act?~~]

(2) A No PRPI Determination is made by answering [~~Whether the governmental action results in a burden on Private Real Property is determined by the answers to~~] the following questions.

(A) Will the proposed governmental action involve a physical seizure or occupation of private real property?

(B) Will the proposed governmental action involve a regulation of private real property or of activities occurring on private real property?

(C) Will the proposed governmental action diminish or destroy the right of a private property owner to exclude others from the property, [~~to~~] possess it, or dispose of it?

(D) Will the value of private real property that is the subject of the proposed governmental action be reduced by 25% or more as a result of the action?

(3) If the answer to all [~~each of the~~] four questions in subsection (e)(2) of this section is "NO," [~~NO,~~] there is a No PRPI [~~Private Real Property Impact (No PRPI)~~] Determination and no further action is required under the Act [~~pursuant to Chapter 2007 of the Government Code is needed for the governmental action~~]. If the answer to any of the four questions in subsection (e)(2) of this section is "YES," a TIA is required by the Act. [~~TYC must undertake evaluation of the proposed governmental action on private real property rights.~~]

(f) [~~(d)~~] TIA [~~Takings Impact Assessment (TIA)~~].

(1) Initiating a [~~Prior to Completion of~~] TIA. Before a TIA is initiated, the following must [~~completed, It should~~] be determined to be true pursuant to the [~~by the above~~] procedures in subsections (d) and (e) of this section [~~that~~]:

(A) the contemplated governmental action does not fall within the categorical determinations [~~Categorical Determinations~~] for which no TIA is required; and

(B) [~~that~~] there may be an impact on private real property interests [~~Private Real Property Interests~~].

(2) Elements of the TIA. If the criteria in section (f)(1) are met, TJJD must prepare a written TIA that does the following: [~~Takings Impact Assessment (TIA). The specific elements that must be evaluated when proposing to undertake a governmental action that requires a TIA include the following actions.~~]

(A) describes [~~Describe~~] the specific purpose of the proposed governmental action; [~~and identify~~]

(B) identifies:

(i) whether and how the proposed governmental action substantially advances its stated purpose; [~~and~~]

(ii) [~~(B)~~] describes [~~Describe~~] the burdens imposed on private real property; and

(iii) [~~(C)~~] describes [~~Describe~~] the benefits to society resulting from the proposed use of private real property; and

(C) [~~(D)~~] explains [~~Determine~~] whether engaging in the proposed governmental action will constitute a taking under the United States Constitution, the Texas Constitution, or the Act; and [~~"taking" by answering:~~]

~~*(i)* Is there a "taking" under the United States Constitution; or~~]

~~*(ii)* Is there a "taking" under the Texas Constitution; or~~]

~~*(iii)* Is there a "taking" under the Act (25% diminution in value of property subject of the governmental action); and~~]

(D) [~~(E)~~] describes [~~Describe~~] reasonable alternative actions that could accomplish the specified purpose and compares, evaluates, and explains [~~compare, evaluate, and explain~~]:

(i) how an alternative action would further the specified purpose; and

(ii) whether an alternative action would constitute a taking.

~~[(e) A takings impact assessment prepared under this section is public information.]~~

§385.8134. Notice of Youth Confessions of Child Abuse.

(a) Purpose. This [~~The purpose of this~~] rule provides requirements, consistent with [~~is to provide guidelines according to~~] the Texas Family Code, Chapter [~~(TFC), chapter~~] 261, Subchapter B, for Texas Juvenile Justice Department (TJJD) [~~Youth Commission (TYC) supervisors to report information given to them by TYC~~] staff members or volunteers to report information regarding TJJD [~~TYC~~] youth who confess [~~confessing, while in any TYC operated facility or contract care program,~~] to having abused or neglected [~~abusing or neglecting~~] a child or children at a time other than when assigned to a TJJD-operated residential facility or contract care program [~~some time in the past when they were not in a TYC operated facility or contract care program~~].

(b) Applicability. This rule does not apply to reporting suspected abuse or neglect of youth in TJJD [~~TYC~~] programs, which is addressed in §380.9333 [~~. See §93.33~~] of this title [~~(relating to Alleged Abuse, Neglect and Exploitation)~~]. [~~See Chapter 261, Subchapter B, Family Code, for reporting confessions of TYC youth who are released under TYC supervision that they abused or neglected children when they were not in a TYC operated facility or contract care program. Such reports must be made within 48 hours to the Department of Family and Protective Services (DFPS) or to a state or local law enforcement agency.~~]

(c) Definitions. For the purposes of this rule, abuse and neglect are defined by Texas Family Code §261.001.

(d) [~~(c)~~] Reporting.

(1) In accordance with Texas Family Code §261.101, a TJJD [~~A TYC~~] staff member or volunteer who has cause to believe [~~has cause to believe, based on information provided by a youth in a TYC operated facility or contract care program,~~] that a TJJD [~~the~~] youth is responsible for abusing or neglecting a child or children at a time other than when the youth was assigned to a TJJD-operated residential [~~some time in the past when the youth was not in a TYC operated~~] facility or contract care program[~~,~~] must, within 48 hours after receiving the [~~report that~~] information upon which the belief is based, report the alleged abuse or neglect[~~, not later than the 48 hours after the staff member first receives it,~~] to the Texas Department of Family and Protective Services (DFPS) or [~~DFPS,~~] to a state or local law enforcement agency where the alleged abuse or neglect occurred. The report must contain accurate and detailed information upon which the cause to believe abuse or neglect occurred is based.[~~, or to the person's appropriate TYC supervisor.~~]

(2) A report does not need to be made if it is determined from existing documentation that the alleged abuse or neglect [~~youth's statement~~]:

(A) has already been referred to DFPS or a law enforcement agency [~~by an agency supervisor~~] and the new report includes no new information;

(B) relates only to conduct that resulted in the youth's commitment to TJJD [~~TYC~~]; or

(C) relates only to conduct that resulted in a previous referral to a juvenile probation department or to juvenile court [~~adjudication, deferred prosecution or disposition without referral to court~~].

(3) The staff member or volunteer must inform his/her supervisor about the report.

~~[(d) Referral of Report for Investigation.]~~

~~[(1) If the victim in a report made pursuant to subsection (c) is a member of the youth's same household, the appropriate TYC supervisor receiving the report shall refer it immediately to DFPS or to the appropriate state or local law enforcement agency for investigation if:]~~

~~[(A) the report is of injuries inflicted at any time that required prompt medical attention or hospitalization and that endangered the alleged victim's life or could have caused permanent functional impairment or disfigurement; or]~~

~~[(B) the report is of oral, anal, or genital intercourse that occurred at any time.]~~

~~[(2) If the victim in a report made pursuant to subsection (c) is not a member of the youth's same household and the youth is considered a high risk, the appropriate TYC supervisor receiving the report shall refer it immediately to DFPS or to the appropriate state or local law enforcement agency for investigation if:]~~

[(A) the report is of injuries inflicted within the previous twelve months that required prompt medical attention or hospitalization and that endangered the alleged victim's life or could have caused permanent functional impairment or disfigurement; or]

[(B) the report is of oral, anal, or genital intercourse that occurred within the previous twelve months and that was without consent under the law.]

[(3) For the purposes of this subsection, a youth is considered a high risk if the report made pursuant to subsection (c), considered in the context of the TYC youth's current circumstances, presents a real and significant likelihood that the alleged victim (if the alleged victim is still a child at the time of the report) will be abused or neglected by the TYC youth in the foreseeable future.]

[(e) Content of Referred Report. A report referred to DFPS or to an appropriate state or local law enforcement agency pursuant to subsection (d) shall include the most accurate and detailed information possible at the time the report is made. Whenever possible, a first-hand account should be provided directly by the person to whom the youth confessed.]

§385.8135. Rights of Victims.

(a) Purpose. This [The purpose of this] rule addresses [is to acknowledge] the rights of victims as described in [the] Texas Family Code Chapter 57 and Texas Code of Criminal Procedure Article 56.02[, Section 57.001, provide information as required,] and allows [allow] victims to provide input into the release process of youth committed to the Texas Juvenile Justice Department (TJJD) [Youth Commission (TYC)].

(b) Applicability. All of the rules and procedures afforded to a victim of a youth in TJJD custody, as indicated by the use of the term victim in this section, are equally afforded to the guardian of a victim or close relative of a deceased victim. [Rules governing confidentiality of youth records can be found in §99.1 of this title regarding confidentiality of a youth's alcohol and drug abuse and §99.9 of this title regarding access to youth information and records.]

(c) Definitions.

(1) Victim--a person who as the result of the delinquent conduct of a juvenile [child] suffers a financial loss or personal injury or harm.

(2) Close relative of a deceased victim--a person who was the spouse of a deceased victim at the time of the victim's death or who is a parent or adult brother, sister, or child of the deceased victim.

(3) Guardian of a victim--a person who is the legal guardian of the victim, whether or not the legal relationship between the guardian and victim exists because of the age of the victim or the physical or mental incompetence of the victim.

[(d) All of the rules and procedures afforded to a victim of a youth in TYC custody, as indicated by the use of the term victim in this section, are equally afforded to the victim's guardian or close relative if the victim is deceased.]

(d) [(c)] Victim Confidentiality.

(1) Information in a Juvenile Victim Impact [victim impact] statement (JVIS) or information submitted in the preparation of a JVIS [victim impact statement] is confidential with regard to the victim's name, social security number, address, telephone number, and [or] any other information which would identify or tend to identify the victim [identifying information, regardless of whether a victim has filed a written, formal request to allow public access of the information held to be disclosed].

(2) Any victim involvement while the youth is in TJJD [TYC] custody is confidential.

(e) [(d)] Victim's Right to Information.

(1) A victim may request, in writing, any of the information listed below:

(A) information concerning the procedures for release or transfer of the youth from one program placement to another including to the custody of the [pardons and paroles division of the] Texas Department of Criminal Justice (TDCJ) [for parole];

(B) notification of: [the proceedings]

(i) [for] release under supervision, including release to TJJD [on] parole; [status, or]

(ii) release to a non-institutional community placement;[,] or

(iii) transfer to TDCJ [for parole concerning the youth]; and

(iv) discharge from TJJD supervision.

[(C) notification of the youth's release under supervision including release on parole status, or release to a non-institutional community placement, or transfer to TDCJ for parole.]

(2) If there is a signed request from the victim, the [The requested] information is[, if appropriate, will be] sent to the victim at his or her most current address on file [by TYC staff at the youth's placement program or administrator of victim services].

(3) For a victim who has requested information concerning a youth, TJJD[, the appropriate TYC] staff may reveal only the following:

(A) that the youth is under TJJD's supervision [TYC's jurisdiction];

(B) the youth's minimum length of stay and/or the minimum period of confinement;

(C) the committing offense in which the victim was involved;

(D) the youth's conditions of parole supervision (except specialized treatment) and physical address if the youth is living at a TJJD residential placement;

(E) information about and an invitation to participate in TJJD's Special Services Committee or Release Review Panel review [a TYC administrative hearing] for the offense in which the victim was involved;

(F) that the youth has been transferred to another location and the name of that location, unless the program is only for substance abuse and/or mental health treatment;

(G) the name of the youth's caseworker and/or [or] parole officer; and

(H) general information about the agency's rehabilitation program without revealing [(do not reveal] specific information regarding the youth's treatment[)].

(f) [(g)] Victim's Right to Participation.

(1) A victim may provide [to TYC for inclusion in the youth's masterfile] information to be considered by TJJD [the commission] before the youth is released [release] under supervision (including release to TJJD [on] parole), released [status, or release] to

a non-institutional community placement, or transferred to prison or TDCJ [~~transfer for~~] parole.

(2) If the victim requests in writing and receives permission to provide input in person, he or she may participate in the staff meeting where [~~a youth's staffing for~~] release under supervision is considered [~~(home on parole status), or movement to a non-institutional community placement, or transfer to TDCJ parole~~]. The victim will [~~shall~~] not be allowed to attend the entire meeting [~~staffing~~] regarding the youth.

(3) Victims who provide in-person input are [~~appear in person will be~~] provided a waiting area separate from any location where they might encounter the youth.

(g) [~~(h)~~] Victim Appeal. The victim has no right of appeal in any TJJD [~~TYC~~] decision.

§385.8145. Volunteers and Community Resources [~~Volunteer~~] Council.

(a) Purpose. This [~~The purpose of this~~] rule establishes [~~is to establish~~] a volunteer program within the Texas Juvenile Justice Department (TJJD) to expand youth opportunities for educational and recreational experiences and to provide youth with increased social interactions.

(b) Community Resource Councils. Community resource councils are established to support the youth committed to TJJD. Community resource councils are [~~Volunteer Council. A volunteer council will be located in each city where a TYC facility exists. Volunteer councils will be~~] organized as nonprofit corporations with tax-exempt [~~tax exempt~~] status. The councils' role includes:

(1) informing the community about TJJD; [~~TYC, advising TYC~~]

(2) informing TJJD of community interests and concerns;[~~, advocating for juveniles,~~]

(3) promoting volunteer/community engagement; and

(4) generating community [~~assisting in providing~~] resources to benefit youth committed to TJJD [~~for juveniles~~].

(c) Volunteer Program.

(1) The manager [~~administrator~~] of community programs administers TJJD [~~relations shall administer TYC~~] volunteer program [~~programs~~].

(2) A qualified community relations coordinator oversees the volunteer program at each TJJD-operated facility and parole office.

(3) [~~(2)~~] Volunteers must successfully complete all screening and application processes, including:

(A) submitting to a criminal background check in accordance with §385.8181 of this title;

(B) providing fingerprints;

(C) providing personal character references; and

(D) participating in an interview.

(4) Volunteers are [~~will be~~] recruited[~~, screened,~~] and selected from various [~~all~~] cultural and socioeconomic segments of the community.

(5) Every TJJD-operated residential facility and parole office must use volunteers to enhance rehabilitation efforts for youth.

(6) [~~(3)~~] Volunteers are [~~will be~~] oriented to the TJJD program and receive training before being assigned to work with youth.

(7) [~~(4)~~] Volunteers must agree in writing to abide by federal and[~~,~~] state [~~and agency~~] laws[~~,~~] and TJJD policies and rules concerning [~~of~~] confidentiality of youth information.

(8) [~~(5)~~] Volunteers are [~~will be systematically,~~] officially registered and provided proper identification as volunteers.

(9) [~~(6)~~] Volunteers may [~~shall~~] not perform professional services for TJJD [~~TYC~~] unless certified or licensed to perform those services.

(d) Youth as Volunteers. Qualified youth are [~~will be~~] encouraged and provided assistance to participate [~~assisted in participating~~] in volunteer activities in the community.

(e) Employees as Volunteers. Employees may participate in volunteer activities in accordance with TJJD's policies and procedures.

§385.8183. Advocacy, [~~and~~] Support Group, and Social Services Provider Access.

(a) Purpose. This rule establishes a process for allowing [~~Policy. The Texas Youth Commission (TYC) allows~~] advocacy and support groups and social services providers to provide on-site information, support, and other services for youth confined in Texas Juvenile Justice Department (TJJD) residential [~~TYC~~] facilities.

(b) Applicability.

(1) This rule applies to residential facilities operated by TJJD.

(2) This rule does not apply to a youth's [~~youth~~] access to his/her [~~a~~] personal attorney or personal clergy member in accordance with §380.9311 of this title[~~, minister, pastor, or religious counselor. See §93.11 of this title (relating to Access to Attorneys and Courts)~~] and §380.9317 of this title [~~§93.17 of this title (relating to Access to Personal Minister, Pastor, or Religious Counselor)~~].

(c) Definitions. The following words and terms[~~, as used in this rule,~~] have the following meanings when used in this rule, unless the context clearly indicates otherwise:

(1) Advocacy or Support Groups--[~~means~~] organizations whose primary functions are to benefit children, inmates, girls and women, persons with mental illness, or victims of sexual assault.

(2) Social Services Providers--organizations whose primary functions are to provide psychological, social, educational, health, and other related services to juveniles and their families.

(3) [~~(2)~~] Confined--[~~means~~] placement in a residential facility.

(4) [~~(3)~~] Confidential Setting [~~setting~~]--[~~means~~] a setting that provides for private conversation but is within the line of sight of a TJJD [~~TYC~~] staff member who is authorized to provide sole supervision of youth.

(d) Registration Procedures.

(1) An advocacy or support group or social services provider must register with TJJD [~~TYC~~] prior to providing on-site information, support, or other services to confined youth.

(2) In order to register with TJJD [~~TYC~~], an advocacy or support group or social services provider must provide the following in a form and manner determined by TJJD [~~TYC~~]:

(A) copy of articles of incorporation on file with the secretary of state or other official documentation showing the organization's primary purpose;

(B) contact information for the local program director(s);

(C) names of all persons employed by or otherwise officially representing the organization [group] who would likely seek access to residential facilities under the provisions of this rule; and

(D) if 24-hour access to residential facilities is believed to be necessary to perform the organization's [group's] primary function, a written justification of the need for such access and the names of individuals representing the organization [group] who perform the function for which 24-hour access is requested.

(3) The TJJD [TYC] division director with responsibility over volunteer services or his/her designee determines [will determine] whether or not an organization qualifies as an advocacy or support group or social services provider as defined in this rule, and whether or not 24-hour access, if requested, is necessary to provide the organization's [group's] primary function.

(4) A determination that an organization does not qualify as an advocacy or support group or social services provider under this rule, or [that] a denial of a request for 24-hour access [has been denied], must be in writing and may be appealed to the TJJD executive director or his/her designee. The appeal must be in writing and clearly state the reason the organization should be considered an advocacy or support group or social services provider under this rule or the reason that denial of 24-hour access would prevent the organization [group] from effectively performing its primary function.

(5) A person representing a registered advocacy or support group or social services provider is [will] not [be] permitted to provide information, support, or other services to youth in a confidential setting unless and until:

(A) TJJD [TYC] conducts a background check pursuant to §385.8181 [§81.81] of this title and clears the person for such access; and

(B) the person signs appropriate confidentiality agreements concerning youth information and/or records.

(6) A registered advocacy or support group or social services provider must provide immediate written notification to TJJD [TYC] when a person who is registered with TJJD [TYC] as a representative of the organization [group] ceases to represent the organization [group].

(e) General Provisions.

(1) A person who has been granted 24-hour access should provide reasonable advance notice of his/her intention to visit a facility to allow for security and confidentiality arrangements to be made. Lack of advance notice does not constitute grounds for denying entry.

(2) A person who has not been granted 24-hour access may access residential facilities during youth waking hours. Such a person[; and] must provide [notice] at least 24-hour [24 hours in] advance notice of his/her [intention to] visit to the [a] facility in order for security and confidentiality arrangements to be made. Visits with less than 24-hour advance notice will be accommodated when possible.

(3) The security and confidentiality measures arranged by TJJD [TYC] must not be designed to deny a registered advocacy or support group access to youth.

(4) A person who has been cleared for access and who has provided adequate advance notice, if required, will not be denied access to any residential facility unless, in the judgment of the facility administrator or designee, the circumstances existing at the time of the visit create an unacceptable risk to the safety of youth, staff, or visitors. If, upon arrival at a facility, a representative of an advocacy or support group or social services provider is denied entry due to unsafe conditions, the facility administrator or designee must provide written justification to the organization within three workdays [business days]. A youth's current placement in a security unit does not[, absent additional factors,] constitute an unacceptable safety risk that [which] would prevent access by a registered group or provider, but may be taken into consideration with other factors in making a determination of the safety of the current circumstances [advocate].

(5) A person who has been cleared for access must present picture identification at the entry point in order to gain access to the facility.

(6) Members [Pursuant to §97.10 of this title, members] of advocacy and support groups or social services providers are subject to search upon entry to a [secure] residential facility in accordance with §380.9710 of this title.

(7) Under state law, any person, including a [Any] registered member of an advocacy and support group or social services provider who has cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation has a legal obligation to report the matter in accordance with §380.9333 of this title. The reporting requirement applies without exception to a person whose personal communications may otherwise be privileged. [See §93.33 of this title for more information on reports and investigations of suspected abuse, neglect, or exploitation.]

(8) Youth have the right to refuse a visit with an advocate or social services provider.

(9) Advocacy [Under §81.11 of this title, advocacy] and support groups and social services providers may file complaints regarding the security and privacy procedures arranged by a facility in accordance with §385.8111 of this title.

(10) Provisions of this rule may not be used to bypass the provisions of §380.9312 [§93.12] of this title regarding visitation procedures for family members of [TYC] youth committed to TJJD.

(f) Revocation of Access.

(1) TJJD [TYC] may revoke the access of a representative of a registered advocacy or support group or social services provider, with written notice, when:

(A) the person has endangered the safety of youth or the security of the facility;[,] or

(B) when the person has violated a TJJD [TYC] confidentiality agreement.

(2) Revocation of access may be appealed to the executive director or his/her designee. The appeal must be in writing and clearly state the reason the person's access should not be revoked.

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

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Jill Mata
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §385.9959, §385.9975

STATUTORY AUTHORITY

Section 385.9959 is proposed under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 385.9975 is proposed under Texas Transportation Code §721.003, which allows TJJD to adopt a rule that exempts TJJD from the requirement to print a state inscription on state-owned motor vehicles.

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

§385.9959. Transportation of Youth.

(a) Purpose. This [~~The purpose of this~~] policy establishes [~~is to establish~~] a system for [~~whereby~~] Texas Juvenile Justice Department (TJJD) [~~Youth Commission (TYC)~~] staff to transport youth among assigned placements and settings using the TJJD Statewide Transportation Unit (the Transportation Unit).

(b) General Provisions.

(1) [~~(b)~~] The Transportation Unit [~~statewide transportation unit, area transportation unit,~~] and individual facility and parole [~~program~~] staff may transport or coordinate the transportation of TJJD [~~TYC~~] youth to and from TJJD [~~among its~~] facilities and community placements and settings [~~corrections programs~~].

(2) Requests for transportation must be approved by the sending chief local administrator or designee following completion of any due process required for youth movement.

(3) The Transportation Unit provides transportation among residential facilities operated by TJJD and between facilities operated by TJJD and contract care programs. The Transportation Unit also provides transportation for youth being returned to a TJJD facility from community-based detention, community placements and settings, or jail. Transportation assistance may be required from TJJD staff or contract care staff at times in order to meet the needs of facilities, community-based detention, community placements and settings, or jails.

(4) When youth are transported between residential facilities operated by TJJD, staff also transport the youth's case file, if available.

(5) County personnel are responsible for transporting all newly committed youth to the TJJD assessment unit and for providing all transportation necessary to meet requirements of a bench warrant. However, the Transportation Unit may provide courtesy transportation or may assist in coordinating transportation of newly committed youth and youth being moved via the Interstate Compact for Juveniles.

(6) Use or possession of chemical agents by TJJD staff is prohibited during transportation.

[~~(c) The statewide transportation unit will provide transportation primarily between programs involving an institution. The unit may provide courtesy transportation and may assist in coordinating transportation of youth between TYC programs not involving an institution, including interstate compact movements, and some new commitments.~~]

[~~(d) Counties are responsible for transporting all new commitments to a TYC assessment unit and for providing all transportation necessary to meet requirements of a bench warrant.~~]

~~(e) Use or possession of chemical agents is prohibited during transportation.~~]

(7) [~~(f)~~] Use [~~All use~~] of mechanical restraint during transportation must [~~shall~~] be in accordance with §380.9723 [~~§97.23~~] of this title [~~(relating to Physical Restraint)~~].

(8) If transportation is not provided or coordinated by the Transportation Unit, the sending facility arranges and, if necessary, pays for transportation of a youth to a placement or home.

§385.9975. State Inscription.

(a) State-owned vehicles used for the following purposes are not required to [~~All state vehicles shall~~] bear the inscription required by [~~as provided in~~] Texas Transportation Code, Chapter 721: [~~Civil Statutes, Article 6701m-1, except~~]

(1) vehicles primarily [~~normally~~] used to [~~by personnel who~~] transport youth; [~~in the vehicle,~~]

(2) vehicles used by staff who are on 24-hour emergency call;[~~, or whose duties require~~]

(3) vehicles used for regular [~~and extended~~] travel away from staff members' [~~their~~] home base; or[~~.~~]

(4) vehicles primarily used as part of the agency's vehicle pool that are available for use by various personnel in support of agency operations.

(b) The purposes to be served by not printing the inscription on these vehicles are to avoid public identification of youth as wards of the state, to facilitate the apprehension of runaways, and to minimize the possibility of personal injury and vandalism of state [~~State~~] property.

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

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §§2.1, 2.3, 2.5, 2.11, 2.14, 2.44, 2.48, 2.49, 2.50, 2.81, 2.83, 2.84, 2.85, 2.102, 2.104, 2.105, 2.106, 2.107, 2.108, 2.110, and 2.131, all relating to the environmental review of transportation projects.

EXPLANATION OF PROPOSED AMENDMENTS

The department has identified the need to make various changes to its environmental review rules to add additional flexibility in certain areas, add clarity, and further streamline and improve the

environmental review process. The various changes proposed in this rulemaking are summarized below.

SUBCHAPTER A. GENERAL PROVISIONS

Amendments to §2.1, Purpose of Rules, remove references to Transportation Code, §203.021; Parks and Wildlife Code §26.001 and §26.002; and Natural Resources Code §183.057. As explained below, the department has determined that there is no need for it to have rules implementing these particular statutes.

Transportation Code, §203.021 contains a hearing requirement for a highway project that bypasses or goes through a county or municipality. The statute sets forth specific requirements for holding such a hearing. While it is possible for a hearing held under the department's environmental review rules to be noticed and held to also satisfy the requirements of §203.021, the department considers the hearing requirement in §203.021 to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §203.021 is a statute that applies by its own force and contains requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing this statute.

Parks and Wildlife Code §26.001 and §26.002 require certain governmental entities to hold a hearing and make certain determinations before approving a program or project that requires the use or taking of public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site. Again, while it is possible for a hearing held on a project under the department's environmental review rules to be noticed to also satisfy the hearing requirement of §26.001 and §26.002, the department considers the hearing requirement in those statutes to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §26.001 and §26.002 are statutes that apply of their own force and contain requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing these statutes.

In 2015, the Texas Legislature transferred and redesignated Natural Resources Code §183.057 as Parks and Wildlife Code §84.007, and also amended the statute. *See* Acts 2015, 84th Legislature, Regular Session, Ch. 401 (H.B. No. 1925), Section 1, effective June 10, 2015. This statute requires certain governmental entities to hold a hearing and make certain determinations before approving a program or project that requires the use or taking of private land encumbered by an agricultural conservation easement. Again, while it is possible for a hearing held under the department's environmental review rules to be noticed to also satisfy the hearing requirement of §183.057, the department considers the hearing requirement in that statute to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §183.057 is a statute that applies by its own force and contains requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing this statute.

Amendments to §2.3, Applicability; Exceptions, add an exception to the applicability of the department's environmental review rules for certain park road projects undertaken in cooperation with the Texas Parks and Wildlife Department (TPWD). The department is obligated to construct, repair, and maintain roads in and adjacent to state parks and related facilities. *See* Section 1.02, Chapter 7 (H.B. No. 9), 72nd Legislature, 1st Called Session, 1991, as amended by Chapter 445 (H.B. No. 1359), 74th Legislature, Regular Session, 1995. The department and TPWD have entered into an Interagency Cooperation Contract regarding Design, Construction, and Maintenance of Roads and Parking Within and Adjacent to the Facilities of the Texas Parks and Wildlife Department, effective August 6, 2014. The Interagency Cooperation Contract between the two agencies specifies that TPWD will provide to the department an environmental clearance certification for all projects on park roads owned and operated by TPWD and not listed on the state highway system indicating that all applicable federal and state laws pertaining to environmental procedures have been met. The department believes that the certification provided by TPWD is sufficient, and therefore these projects should be excepted from the environmental review requirements of Chapter 2. Projects on park roads that are owned and operated by TxDOT and listed on the state highway system remain subject to Chapter 2.

Amended §2.3 also excepts from the applicability of Chapter 2 contractor activities outside of the right-of-way which are not directed or directly controlled by the department, including staging areas, disposal sites, equipment storage, and borrow sites selected by a contractor. Compliance with environmental laws in those areas is the respective contractor's responsibility. Contractors may be subject to sanctions under Chapter 9, Subchapter G of the department's rules, relating to Highway Improvement Contract Sanctions, for failure to comply with environmental laws applicable to their activities outside the right-of-way.

Amended §2.3 also clarifies that relocations of individuals, families, businesses, farm operations, nonprofit organizations or utilities to locations outside the right-of-way are not subject to review under Chapter 2. The removal or displacement of any improvement, infrastructure, or activity within the right-of-way is, of course, subject to review under Chapter 2 as part of the respective transportation project. However, while the owners or tenants of certain improvements, infrastructure, and activities may be entitled to compensation or relocation benefits, or both, when displaced by a transportation project in accordance with applicable law, the department does not have jurisdiction or control over the re-establishment of any displaced improvement, infrastructure, or activity by those owners or tenants on property outside the right-of-way. That type of relocation is, therefore, outside the scope of environmental review under Chapter 2.

Amendments to §2.5 remove the definition of "department public hearing officer." As indicated below, amendments to §2.106, Opportunity for Public Hearing, and §2.108, Public Hearing, also remove references to the phrase, "department public hearing officer." This term is confusing because, as provided in subsection (f) of §2.101, General Requirements, the individuals who preside over a public hearing are not always a department employees. Additionally, amendments to §2.106 and §2.108 remove the requirement of a certification signed by the public hearing officer, as the department believes that there is no need to specify by rule the individual authorized to execute a certification regarding the public participation process.

Amended §2.5 also revises the definition of "environmental review document" to refer to a "documented" reevaluation. This revision corresponds to amendments to §2.85, Reevaluations,

which differentiate between "documented reevaluations" and "consultation reevaluations." This distinction is explained further below in the context of the amendments to §2.85.

Amended §2.5 also removes both the definition of "transportation enhancement" and inclusion of that term in the definition of "transportation project." In 2012, the Federal Moving Ahead for Progress in the 21st Century Act, or "MAP-21," replaced the Federal Transportation Enhancement Activities Program with the Transportation Alternatives Program. The Transportation Alternatives Program is a federal funding program for on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation, community improvement activities, and other types of projects.

The department is required to follow its Chapter 2 rules both for state and Federal Highway Administration (FHWA) transportation projects, at least to the extent they are not inconsistent with applicable federal requirements. However, the primary purpose of the rules is to implement Transportation Code, §201.604, which requires the department to have rules governing the environmental review of the department's projects that are not subject to review under the National Environmental Policy Act (NEPA). Because Transportation Enhancement Program projects are, by definition, federally funded, they are subject to review under NEPA. The department believes it is neither necessary nor appropriate to include them in the definition of "transportation project" in Chapter 2, as they are a federally defined category of actions that are automatically subject to NEPA.

Amendments to §2.11, Employee Certification Process, provide that the certification is required only for a person who is employed by a department district and holds the job title of environmental specialist. The existing rule provides that the certification is required for a person who is employed by a department district and "prepares or reviews environmental reports, environmental review documents or documentation of categorical exclusion." This is too broad however, as there are many different jobs at the department that involve the review of environmental documentation, but that do not necessarily warrant certification under the Environmental Affairs Division's (ENV) process. The proposed revision conforms the rule to the applicable statute, Transportation Code §222.006, which requires the certification only for "department district environmental specialists."

Amendments to §2.14, Project File, provide that a local government project sponsor must provide the project file to the department delegate before approval of the environmental review document or documentation of categorical exclusion. This change will ensure that the department delegate will have access to the full project file prior to rendering an environmental decision on the project.

SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

Amendments to §2.44, Project Scope, provide that a project scope is required only for a project for which an environmental review document is expected to be prepared, or for any project for which documentation of categorical exclusion (CE) is expected to be prepared and for which the project sponsor is a local government. The purpose of this change is to no longer require project scopes to be prepared for CE projects for which an organizational unit of the department is the project sponsor. CE projects are intended to have the most minimal level of environmental review. The department has determined that the additional administrative burden of requiring project scopes for CE projects undertaken by the department, in addition to the preparation of CE documentation, is not justified by the relatively minor associated benefits. Department personnel have become very familiar with the requirements applicable to most CE projects, and the department is confident that it can properly document that a project qualifies for a CE using the standardized CE documentation required under §2.81, relating to Categorical Exclusions, without the additional procedural step of preparing a project scope. Project scopes will continue to be required for CE projects for which a local government is the project sponsor, as the department believes that it remains a useful exercise for those entities that may not be as familiar as department personnel with requirements applicable to CE projects.

Amendments to §2.48, Administrative Completeness Review, exclude draft environmental impact statements (DEIS), and consultation reevaluations from the requirement to perform an administrative completeness review. The existing rule states that administrative completeness review is required for all environmental review documents, with a clarification that CE projects for which a checklist is prepared are exempt. However, the department does not intend for there to be an administrative completeness review for a DEIS. The primary purpose of administrative completeness review is to ensure that a document is complete, and ready for a timed technical review subject to a review deadline under Transportation Code, §201.759. In other words, if the project sponsor has submitted a document that is, on its face, incomplete, the timed technical review under §201.759 should not begin until the document is re-submitted as a complete document. Under Transportation Code, §201.759, there is a deadline for completing a timed technical review of a final environmental impact statement (FEIS), but there is no such deadline for review of a DEIS. There is, therefore, no compelling reason to have a separate administrative completeness review for a DEIS before it is reviewed for readiness for public review.

Also, the proposed distinction between documented reevaluations and consultation reevaluations in amended §2.85 requires a change to §2.48 to clarify that there is no administrative completeness review for a consultation reevaluation. The amended version of §2.48 provides that administrative completeness review is required only for draft EAs, FEISs, documented reevaluations, and CEs for which a narrative document is prepared rather than a checklist.

Amended §2.48 also clarifies that once a document is declared administratively complete, no further administrative completeness review is required for future revised, amended or final versions of the same document. The department believes this clarification is needed to avoid confusion when an environmental review document is heavily revised or there is a long delay between submittal of different versions of the same document.

Amendments to §2.49, Technical Review, clarify that, while technical review for most types of environmental review documents begins when the document has been determined to be administratively complete, technical review of a DEIS begins when the department delegate receives the document from the project sponsor. This revision corresponds to the above-described amendments to §2.48, indicating that there is no administrative completeness review for a DEIS.

Amendments to §2.50, Deadlines for Completing Certain Types of Technical Reviews; Suspension of Technical Review Deadlines, clarifies the meaning of "the date the public participation

process concludes" for purposes of determining the 60-day deadline for rendering an environmental decision on an EA. If no hearing is held and no public comments are received on the draft EA, then "the date the public participation process concludes" is the date on which the project sponsor submits to the department delegate a written confirmation that no further public participation is required and none will be conducted. If a hearing is held or if public comments are received on the draft EA, then "the date the public participation process concludes" is the date that the project sponsor submits to the department delegate the documentation of public hearing required by §2.107 of this chapter (relating to Public Hearing), if applicable, and a revised EA responsive to any public comments received. The department believes this clarification is needed because the existing rule does not account for situations in which only an opportunity for public hearing is held or comments are received outside of a public hearing. Additionally, the public participation process does not "conclude" until the project sponsor has developed responses to any comments received and any corresponding revisions to the draft EA.

Amended §2.50 also provides that the deadline for rendering an environmental decision within 120 days of when the department delegate determines that a reevaluation is administratively complete applies only to a "documented" reevaluation. As described below in the context of amendments to §2.85, Reevaluations, the department is making a distinction between "documented reevaluations" and "consultation reevaluations." While consultation reevaluations should be appropriately noted in the project file, there is no requirement to prepare a document for administrative and technical review if the result of a consultation reevaluation is that no documented reevaluation is required.

SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

Amendments to §2.81, Categorical Exclusions, provide that no environmental issues checklist is required for projects covered by a programmatic CE issued by ENV. It has been the department's experience that certain classes of activities, by definition, do not involve any potential for significant environmental impacts or need for coordination with resource agencies, and therefore may be cleared as CEs on a programmatic basis, without the need for preparation of an environmental issues checklist for each individual covered project. The department believes that, while written confirmation of a project's coverage under a programmatic CE satisfies the existing rule's requirement of an environmental issues checklist, it is more straightforward to expressly acknowledge in the rule that no checklist is required for a project that is covered under a programmatic CE issued by the ENV.

Amended §2.81 also changes the section heading in the reference to §2.131 to conform to the changes made to that heading by these rules.

Amendments to §2.83, Environmental Assessments, provide that, when a public hearing is held, the department delegate will review "the documentation of public hearing" rather than the "summary and analysis." As explained below in the context of amendments to §2.107, the department will no longer require preparation of a public hearing "summary and analysis." Instead, the department will require preparation of "documentation of public hearing," which consists of various types of materials specified by guidance, including a comment and response matrix.

Amended §2.83 also removes the requirement to include in an EA "a summary of the contacts with agencies and the comments received." The department believes that the remaining requirement to include in the EA the results of coordination, which would typically include copies of any correspondence with resource agencies, is sufficient.

Amendments to §2.84, Environmental Impact Statements, clarify that an environmental impact statement (EIS) is prepared not only if there are likely to be a significant environmental impacts, but also if the project is of a type for which an EIS is typically prepared. ENV is familiar with the types of projects for which an EIS is typically prepared, such as large scale new highways or added-capacity highways. The department believes amendment of §2.84 is needed to ensure that the default classification of these types of projects is an EIS, even when department personnel is unable to conclude that the project is likely to involve significant environmental impacts.

Amended §2.84 also removes the requirement to include in an EIS "a summary of the contacts with agencies and the comments received." The department believes that the remaining requirement to include in the EIS the results of coordination, which would typically include copies of any correspondence with resource agencies, is sufficient.

Amended §2.84 also reflects that a notice of availability of a DEIS or FEIS is "issued" rather than "published." The department believes that "issue" more appropriately describes the department's dissemination of a notice of availability, which, depending on the type of document, may not actually be "published" in any periodical.

Amended §2.84 also removes the reference to preparation of a "draft" record of decision. While a record of decision, like most written documents, is likely to go through one or more rounds of drafting prior to being finalized, preparation of a "draft" record of decision is not a separate procedural step.

Amended §2.84 also revises the description of a record of decision (ROD) to more closely track that set forth in rules promulgated by the Federal Council on Environmental Quality (CEQ) at 40 C.F.R. §1505.2 and by FHWA at 23 C.F.R. §771.127. The department believes the revised description of a ROD to be more clear and precise.

Amended §2.84 also revises the department's procedure for producing a combined FEIS/ROD. Instead of having two signature lines on the cover of the combined FEIS/ROD, one for the FEIS and the other for the ROD, and then waiting 30 days between signing separately for the FEIS and the ROD as required by the existing rule, the revised rule allows the department delegate to sign just once to indicate approval of the combined FEIS/ROD. This is consistent with how other states appear to be handling combined FEIS/RODs. The 30-day waiting period prior to issuance of a ROD remains in place when the FEIS and ROD are prepared as separate documents.

Amended §2.84 also clarifies the language prohibiting certain project activities until a ROD is issued. The existing rule prohibits "further approvals...except for administrative activities taken to secure further project funding." This language, patterned after FHWA's rule governing RODs at 23 C.F.R. §771.127(a), is somewhat vague and confusing. The department believes it is more appropriate, and consistent with the overall purpose of the department's environmental review requirements, to prohibit "any action concerning the project that would have an adverse environmental impact or limit the choice of reasonable alternatives"

until the ROD is issued. The revised language is patterned after CEQ's rule at 40 C.F.R. §1506.1.

Amendments to §2.85, Reevaluations, make a distinction between documented reevaluations and consultation reevaluations, and provide that documented reevaluations may be in the form of a checklist. Documented reevaluations are required if an FEIS is not submitted to the department delegate within three years after a DEIS is circulated, or if major steps to advance the project have not occurred within three years after the FEIS, an FEIS supplement, or the last major department approval or grant. ENV has developed a checklist for preparing a documented reevaluation. While it may be necessary to develop technical reports or other materials in support of a documented reevaluation, the reevaluation itself should be in the format of the department's prescribed checklist.

A consultation evaluation, as opposed to a documented reevaluation, will be conducted whenever there are changed circumstances that could affect the continued validity of a ROD, finding of no significant impact (FONSI) or CE designation. If either the project sponsor or department delegate believes that changed circumstances are present, the project sponsor and department delegate will consult to determine if the environmental documentation remains valid in light of the changed circumstances. The project sponsor should record this consultation in the project file. For example, a journal entry may be added to the department's Environmental Compliance Oversight System indicating the consultation between project sponsor and department delegate, and any determination or outcome of that consultation. If the project sponsor and department delegate are both confident that the environmental documentation remains valid, then there is no need to prepare a documented reevaluation. However, if either the project sponsor or department delegate has any concerns about the continued validity of the environmental documentation, then a documented reevaluation must be completed. Again, any such documented reevaluation should be prepared using the department's prescribed checklist format.

SUBCHAPTER E. PUBLIC PARTICIPATION

Amendments to §2.102, Notice of Intent, make two changes to the department's procedures for issuing a notice of intent (NOI), which signals the department's intent to begin the process for preparing an EIS for a project.

First, the department will publish an NOI either in the *Texas Register* or in the *Federal Register,* depending on whether the project is a state or FHWA transportation project, but not in both the *Texas* and *Federal Registers.* Any benefits of the requirement in the existing rule to publish all NOIs in the *Texas Register,* even for FHWA transportation projects for which the NOI is also published in the *Federal Register,* do not justify the additional administrative burden. Publication of the NOI for an FHWA transportation project in the *Federal Register* should be sufficient to alert those entities with interest in the department's EIS projects. Additionally, federal law requires the department to hold early scoping public meetings following issuance of an NOI for an FHWA transportation project. *See* 23 U.S.C. §139. The methods used to notify the public of these early scoping meetings are typically tailored to the type and location of the project in order to maximize public awareness. Notification of these meetings is an effective way to notify the public of an FHWA EIS project, without publishing an NOI in the *Texas Register* that is duplicative of the one published in the *Federal Register.*

Second, the department is removing the requirement of newspaper publication of an NOI. Again, the department believes that the benefits of such a publication do not justify the associated administrative burden and cost, especially since early scoping meetings are advertised to the public using context-specific methods that effectively notify the public of the project very early in the environmental review process.

Amendments to §2.104, Meeting with Affected Property Owners (MAPO), require one or more MAPOs to be held when a project requires a road or bridge closure. The department considers a road or bridge closure as a form of detour, which is one of the triggers for a MAPO in the existing rule, but believes that this revision is needed to clarify the intent of the existing rule.

Amendments to §2.105, Public Meeting, shorten the explanation of the purpose of a public meeting to the essential functions, and remove superfluous descriptive language regarding the purpose of a public meeting.

Amended §2.105 also removes the limitation in the existing rule that the decision to hold a public meeting be based on the level of public concern "that is based on environmental issues." The decision to hold a public meeting should be based on the level of public concern about the project generally, not just environmental issues.

Amended §2.105 also removes the requirement of a project sponsor to prepare a written summary of a public meeting that includes specific enumerated elements. The department believes that the benefits of a written summary of a public meeting do not justify the additional administrative burden and cost. Instead, project sponsors will be required to assemble documentation of a public meeting in accordance with guidance provided by ENV. ENV will continue to require project sponsors to prepare and include in the documentation a matrix containing the department's responses to comments received from the public.

Amendments to §2.106, Opportunity for Public Hearing, remove the requirement that the project sponsor's certification of the public participation process be "signed by the department public hearing officer." As indicated above, the phrase, "department public hearing officer," is confusing because, as provided in subsection (f) of §2.101, General Requirements, the individuals who preside over public hearings are not always department employees. Additionally, the department believes that there is no need to specify by rule the individual authorized to execute a certification regarding the public participation process.

Amended §2.106 also clarifies that notice of the opportunity to request a public hearing must be published before the 30th day before the deadline for submission of written requests for holding a public hearing. This is not a substantive change, but rather conforms to style used elsewhere in Chapter 2.

Amended §2.106 also clarifies that an opportunity for public hearing is afforded for a project for which an environmental assessment is being prepared, rather than a project for which "the results of environmental studies support a FONSI." This change is needed because the existing language may be interpreted as requiring speculation as to what the ultimate conclusion of the environmental assessment will be when determining whether or not an opportunity for public hearing must be afforded.

Amended §2.106 also removes the requirement to afford an opportunity for public hearing when the project sponsor or department delegate determines it is in the public interest. The depart-

ment believes that, in situations in which none of the other criteria for affording a public hearing are triggered, but project-specific facts nevertheless warrant a level of public participation beyond a public meeting, a public hearing, rather than a mere opportunity for one, would be more appropriate. The "public interest" criteria, is therefore moved from §2.106 to §2.107, Public Hearing.

Amendments to §2.107, Public Hearing, remove the requirement to hold a public hearing for "a high-profile project." It has been the department's experience that the phrase, "a high-profile project," is too subjective to be a helpful threshold for determining when a public hearing is required. Additionally, a project that may be considered "high-profile" may not, in fact, be the subject of substantial public interest from an environmental review perspective, in which case it would not be a judicious use of the department's resources to hold a hearing on the project.

Amended §2.107 also revises the requirement to hold a hearing on a project that constructs a new "facility" on a new location to instead require a hearing on a project that constructs a new "highway" on a new location. "Facility" is not defined, and could be construed to mean relatively minor infrastructure improvements, such as construction of a pedestrian or bike path, for which a public hearing would not necessarily be justified. Additionally, revising to "highway" corresponds to the requirement in Transportation Code §203.022 to provide notice and an opportunity to comment to adjoining landowners and local governments for projects that involve "the construction of a highway at a new location."

Amended §2.107 also removes references to Chapter 26 of the Parks and Wildlife Code and Chapter 183 of the Natural Resources Code. As explained above, the department considers the hearing requirements in those statutes to be separate from and not subject to the requirements for hearings held under its environmental review rules.

Amended §2.107 also revises the timeframe for publishing newspaper notice of a public hearing, and for making maps, drawings, environmental reports, and other documents available for public inspection, to at least 15 days before the hearing. Under the existing rule, these items are due 30 days before the hearing. This change will allow additional flexibility in the scheduling and arrangement of facilities for holding a public hearing.

Amended §2.107 also revises the deadline for accepting public comments to 15 days after the date of the public hearing, regardless of whether the hearing was held for an EA or EIS project. Under the existing rule, the comment deadline is 10 days after the hearing for an EA project, and 15 days after the hearing for an EIS project. Changing the comment deadline to 15 days after the hearing for both EA and EIS projects reduces the chances for confusion about the correct deadline. It also provides a full 30 days for public comment after the notice of hearing is published and materials are made available for public review.

Amended §2.107 also removes the requirement of a project sponsor to prepare a written summary of a public hearing that includes specific enumerated elements. The department believes that the benefits of a written summary of a public hearing do not justify the additional administrative burden and cost. Instead, project sponsors will be required to assemble documentation of a public hearing in accordance with guidance provided by ENV. ENV will continue to require project sponsors to prepare and include in the documentation a matrix containing the department's responses to comments received from the public.

Amended §2.107 also adds the requirement to hold a public hearing when the department delegate determines it is in the public interest. As explained earlier, the department believes this trigger is more appropriately included under §2.107, Public Hearing, rather than under §2.106, Opportunity for Public Hearing.

Amendments to §2.108, Notice of Availability, reflect that a notice of availability (NOA) of a DEIS or FEIS is "issued" rather than "published." The department believes that "issue" more appropriately describes the department's dissemination of a notice of availability, which, depending on the type of document, may not actually be "published" in any periodical.

Amended §2.108 also clarifies that an NOA is issued only for a draft EA. There is no separate NOA for the final EA, as notice of completion of the environmental review process is provided by issuance of an NOA for the FONSI.

Amended §2.108 specifies that NOAs must be sent to agencies "that have submitted written comments on the project." This change is needed because the requirement in the existing rule that NOAs be sent to "agencies with an interest in the project" is too vague.

Amended §2.108 requires an NOA of a draft EA to be published on the department's website. The existing rule only requires NOAs of FONSIs, DEISs, FEISs, and RODs to be published on the department's website. In the interest of encouraging public involvement in the environmental assessment process, the department believes that draft EAs should be similarly noticed on the department's website.

Amended §2.108 also requires newspaper publication of an NOA for a draft EA for which no public hearing is held or an FEIS. This conforms the department's rules to FHWA's rules on this point, which require newspaper notice for these types of NOAs. *See* 23 C.F.R. §771.119(f) regarding EAs and 23 C.F.R. §771.125(g) regarding FEISs.

Newspaper publication of an NOA for a draft EA may be combined with the opportunity for public hearing notice published under §2.106(c), in which case the department recommends that the title of the notice read, "Notice of Availability of Draft Environmental Assessment and Opportunity for Public Hearing." The combined notice should also clearly indicate how copies of the draft EA may be obtained. Combining the NOA and notice of opportunity for public hearing avoids the need for a second newspaper publication of an NOA for the draft EA if no requests are ultimately received in response to the opportunity for public hearing.

Amended §2.108 also provides that the department will publish an NOA for a DEIS, FEIS or ROD either in the *Texas Register* or in the *Federal Register,* depending on whether the project is a state or FHWA transportation project, but not in both the *Texas* and *Federal Registers.* The benefits of the requirement in the existing rule to publish an NOA for a DEIS or FEIS in the *Texas Register,* even for FHWA transportation projects for which the NOA is also published in the *Federal Register,* do not justify the additional administrative burden. Publication of the NOA for an FHWA DEIS or FEIS in the *Federal Register* should be sufficient to alert those entities with interest in the department's EIS projects.

Amended §2.108 also removes the requirement of a separate NOA for the ROD when a combined FEIS and ROD is issued. As explained above, §2.84, Environmental Impact Statements, is revised to no longer require two signature lines on the cover of the combined FEIS/ROD with a 30-day waiting period between signatures. It is, therefore, no longer necessary to have a separate NOA for the ROD when a combined FEIS/ROD is issued. A single NOA for the combined document will suffice.

Amended §2.108 also requires that an NOA of a DEIS published in the *Texas Register* or *Federal Register* shall establish a period of not fewer than 45 days and no more than 60 days for the return of comments on the DEIS. The purpose of this change is to conform the department's rules to the analogous FHWA rule, 23 C.F.R. §771.124(i).

Amendments to §2.110, Notice of Impending Construction, provides that the department may provide owners of adjoining property and affected local governments and public officials with notice of impending construction by any means approved by ENV, which may include a sign or signs posted in the right-of-way, mailed notice, printed notice distributed by hand, or notice via website when the recipient has previously been informed of the relevant website address. This will allow the department to more efficiently communicate this notice to the intended audience than would be allowed if mailed notice were the only option.

Amended §2.110 also requires that the notice of impending construction must be provided after a CE determination or issuance of a FONSI or ROD for the project, but before earthmoving or other activities requiring the use of heavy equipment commence. The department believes that this is the appropriate time frame for giving notice of impending construction, as commencement of heavy equipment use may have the potential for impacts to local landowners and governments.

SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

Amendments to §2.131, Special Right-of-Way Acquisition, remove requirements implementing Parks and Wildlife Code, Chapter 26 and Natural Resources Code, Chapter 183. As explained above, those statutes apply by their own force and contain requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing these statutes. The amendments also re-name the section as "Advance Acquisition of Right-of-Way," as this is the only remaining subject covered by the rule after removal of the requirements implementing Parks and Wildlife Code, Chapter 26 and Natural Resources Code, Chapter 183.

Amended §2.131 also eliminates the requirement to prepare a CE analysis when the department acquires real property for corridor preservation, access management, or other purposes prior to completion of the environmental review process for a project. Those types of advance acquisitions by the department must instead be preceded by preparation of a due diligence report, which will assess the presence or likelihood of contamination and any other undesirable conditions on the real property, and whether the real property consists of any public land that is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site. The department believes that a due diligence report is more appropriate than a CE analysis as there are generally no environmental impacts associated with the mere acquisition of real estate. Project impacts on a parcel that was the subject of advance acquisition will be identified and evaluated as part of the environmental review of the actual project.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each 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 proposed amendments. Because this proposed rulemaking is intended, in part, to make the department's environmental review process more efficient, the department anticipates some associated reductions in costs to the state and to local governments electing to participate as project sponsors. However, cost reductions associated with realized efficiencies of the department's environmental review process are difficult to estimate and cannot be quantified.

Carlos Swonke, Director, Environmental Affairs Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Swonke has also determined that for each year of the first five years in which the proposed amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be increased efficiency in completing the environmental review of the department's projects. 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.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The department determined that this rulemaking relates to actions subject to the Texas Coastal Management Program (CMP) under the Coastal Coordination Act of 1991, as amended (Natural Resources Code, §§33.201 et seq.), because it concerns the department's rules on the environmental review of transportation projects. The department reviewed this action for consistency with the CMP goals and policies provided in 31 TAC Chapter 501, Subchapter B. The department has determined that the action is consistent with applicable CMP goals and policies.

A CMP goal applicable to the department's activities is that transportation projects shall comply with certain practices concerning the siting of a project to lessen the impacts on coastal natural resources (see 31 TAC §501.31). The department's Chapter 2 rules concern the method by which to evaluate the environmental impacts of a transportation project, and do not dictate the siting of a project. However, §2.134, Coastal Management Program, specifies that approval of a transportation project located in whole or in part within the coastal boundary is an action subject to the Texas Coastal Management Program, and that such a project may not be approved if it is found to be inconsistent with the goals and policies of the CMP. The department's rules are consistent with CMP goals and policies by specifically incorporating them in this manner. Section 2.134 is not revised as part of this rulemaking.

A copy of this rulemaking will be submitted to the General Land Office for its comments on the consistency of the proposed rulemaking with the CMP. The department requests that the public also give comment on whether the proposed rulemaking is consistent with the CMP.

SUBMITTAL OF COMMENTS

Written comments on this proposed rulemaking may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Environmental Review Rules." The deadline for receipt of comments is 5:00 p.m. on May 16, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§2.1, 2.3, 2.5, 2.11, 2.14

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.1. Purpose of Rules.

This chapter implements Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 201.751 - 201.761, 201.762(b), [~~203.021,~~] 203.022, 203.052 and 222.006[~~; Parks and Wildlife Code, §26.001 and §26.002; and Natural Resources Code, §183.057~~].

§2.3. Applicability; Exceptions.

(a) Application of chapter. This chapter prescribes the environmental review and public participation requirements for:

(1) a state transportation project or FHWA transportation project conducted by the department;

(2) a state transportation project or FHWA transportation project of a private or public entity that is funded in whole or in part by the department; or

(3) a state transportation project or FHWA transportation project of a private or public entity that requires commission or department approval.

(b) Exceptions.

(1) Notwithstanding subsection (a) of this section, this chapter does not apply to [~~a transportation project that is~~]:

(A) a transportation project that is not on the state highway system and that the department funds solely with money held in a project subaccount created under Transportation Code, §228.012; [~~or~~]

(B) a transportation project that is developed by a county under Transportation Code, §228.011, or developed by a local toll project entity under Transportation Code, Chapter 373, and that is not on the state highway system and for which the department does not use funds other than funds derived solely from money held in a project subaccount created under Transportation Code, §228.012; or[~~.~~]

(C) a state transportation project that is covered by an interagency cooperation contract between the department and the Texas Parks and Wildlife Department for the design, construction, or maintenance of a road or parking area or facility within or adjacent to a facility of the Texas Parks and Wildlife Department, and that is on a park road that is owned and operated by the Texas Parks and Wildlife Department and not on the state highway system.

(2) An agreement entered into by the department for a transportation project excepted under paragraph (1) of this subsection must require that the entity responsible for implementing the project will comply with all environmental review and public participation requirements applicable to that entity under other state and federal law in connection with the project.

(3) Notwithstanding subsection (a) of this section only §2.132 of this chapter (relating to Gulf Intracoastal Waterway Projects) applies to a project concerning the Gulf Intracoastal Waterway.

(c) Compliance with rules of federal transportation agency other than FHWA. For transportation projects conducted or supported by a federal transportation agency other than FHWA, and for transportation projects conducted or supported by multiple federal transportation agencies and for which FHWA is not the lead federal agency, the department delegate and project sponsor will comply with the environmental review rules of the lead federal agency, and not the rules in this chapter.

(d) Transportation project developed by a local governmental entity or private entity. This chapter does not apply to a transportation project that:

(1) is developed by a local governmental entity or private entity;

(2) is not on the state highway system or on other department-owned property;

(3) is funded with no state or federal funds; and

(4) does not require department approval.

(e) Excepted activities. For the purposes of this chapter:

(1) a contractor activity that is not directed or directly controlled by the department and that is in an area outside of the right-of-way, including a staging area, disposal site, equipment storage site, or borrow site selected by a contractor, is not part of a transportation project; and

(2) the relocation of an individual, family, business, farm operation, nonprofit organization, or utility to a location outside of the right-of-way is not part of a transportation project.

§2.5. Definitions.

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

(1) Affected local government--The governing body of a county or municipality in which a project is located.

(2) Best management practices--Practices that are determined to be the most efficient, practical, and cost effective measures to guide a particular activity or address a particular problem.

(3) CE (Categorical Exclusion)--Is covered by §2.81 of this chapter (relating to Categorical Exclusions).

(4) Commission--The Texas Transportation Commission.

(5) DEIS (Draft Environmental Impact Statement)--Is covered by §2.84 of this chapter (relating to Environmental Impact Statements).

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

[(7) Department Public Hearing Officer--The person authorized by the department to conduct a public hearing.]

(7) [(8)] Disposal plan--An operationally suitable method for the placement of dredged material that avoids or minimizes adverse environmental impacts.

(8) [(9)] District--One of the 25 geographical districts into which the department is divided.

(9) [(10)] Division--One of the department's divisions listed on the department's organizational chart.

(10) [(11)] EA (Environmental Assessment)--Is covered by §2.83 of this chapter (relating to Environmental Assessments).

(11) [(12)] EIS (Environmental Impact Statement)--Is covered by §2.84 of this chapter.

(12) [(13)] Environmental Affairs Division--The Environmental Affairs Division of the department.

(13) [(14)] Environmental report--A report, form, checklist, or other documentation analyzing an environmental issue in the context of a specific transportation project or presenting a thorough summary of an environmental study conducted in support of an environmental review document, or demonstrating compliance with a specific environmental requirement. The term does not include a permit or other approval outside the scope of the environmental review process.

(14) [(15)] Environmental review document--An environmental assessment, an environmental impact statement, a documented reevaluation, a supplemental environmental impact statement, or, for an FHWA transportation project, a document prepared to demonstrate that it qualifies as a categorical exclusion when FHWA requires a narrative document as opposed to a checklist. An environmental review document includes any attached environmental reports.

(15) [(16)] FEIS (Final Environmental Impact Statement)--Is covered by §2.84 of this chapter.

(16) [(17)] FHWA--The United States Department of Transportation Federal Highway Administration.

(17) [(18)] FHWA transportation project--A transportation project for which FHWA's approval is required by law to comply with NEPA, FHWA is the lead federal agency, and FHWA agrees the department may act as the joint lead agency under 23 Code of Federal Regulations §771.109.

(18) [(19)] FONSI (Finding of No Significant Impact)--Is covered by §2.83 of this chapter.

(19) [(20)] Highway project--A project that is:

(A) for the construction or maintenance of a highway or related improvement on the state highway system; or

(B) for the construction or maintenance of a highway or related improvement not on the state highway system but that is funded wholly or partly with federal money.

(20) [(21)] MAPO (Meeting with Affected Property Owners)--Is covered by §2.104 of this chapter (relating to Meeting with Affected Property Owners (MAPO)).

(21) [(22)] NEPA--The National Environmental Policy Act, codified at 42 United States Code §§4321, et seq.

(22) [(23)] NOI (Notice of Intent)--Is covered by §2.102 of this chapter (relating to Notice of Intent (NOI)).

(23) [(24)] ROD (Record of Decision)--Is covered by 2.84 of this chapter.

(24) [(25)] SEIS (Supplemental Environmental Impact Statement)--Is covered by §2.86 of this chapter (relating to Supplemental Environmental Impact Statements).

(25) [(26)] Significant--As used in reference to the significance of the impact of a project, has the meaning as that term is used and has been interpreted under NEPA and its related regulations, including 40 Code of Federal Regulations §1508.27.

(26) [(27)] State highway system--The system of highways designated by the commission under Transportation Code, §203.002.

(27) [(28)] State transportation project--A transportation project that is not subject to NEPA.

(28) [(29)] Toll project--Has the meaning assigned by Transportation Code, §201.001.

[(30) Transportation enhancement--An activity that is listed under 23 United States Code §101(a)(35), relates to a transportation project, and is eligible for federal funding under 23 United States Code §133.]

(29) [(31)] Transportation project--A project to construct, maintain or improve a highway, rest area, toll facility, aviation facility, public transportation facility, rail facility, ferry, or ferry landing. [A transportation enhancement is also a transportation project.]

§2.11. Employee Certification Process.

(a) Certification required. A person who is employed by a department district and holds the job title of environmental specialist [prepares or reviews environmental reports, environmental review documents or documentation of categorical exclusion] must successfully complete a certification process under this section.

(b) Timing. A person must successfully complete the certification process within one year after the date that the person begins employment in a district.

(c) Recertification. To maintain certification under this section, a person must document that the person has attended a minimum number of hours of continuing education related to the preparation and review of environmental reports, environmental review documents, and documentation of categorical exclusions during the previous two years. The Environmental Affairs Division will set the minimum number of hours of continuing education required to be completed in each two-year period.

§2.14. Project File.

The project sponsor will, as directed by the department delegate, maintain the documentation showing work completed under this chapter in a project file. The project sponsor may not disclose a draft of documentation of categorical exclusion or an environmental review document before public disclosure of the draft or document is approved by the department delegate or, for an FHWA transportation project, by FHWA. If the project sponsor is a local government, prior to [on] approval of

the environmental review document or documentation of categorical exclusion, the local government will forward the project file to the department as directed by the department delegate.

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

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Deputy General Counsel
Texas Department of Transportation
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SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

43 TAC §§2.44, 2.48 - 2.50

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.44. Project Scope.

(a) Project scope required. If an environmental review document is expected to be prepared for a highway project, or if the project sponsor for a highway project is a local government and documentation of categorical exclusion is expected to be prepared for the project, the [~~The~~] project sponsor, in collaboration with the department delegate, will prepare a detailed project scope that describes the preparation of the environmental review document or documentation of categorical exclusion and performance of related tasks. A district or division that has dual roles as both project sponsor and department delegate satisfies this requirement by placing the project scope in the project file. For purposes of this section, a project sponsor includes a local government that proposes to serve as a project sponsor and intends to seek the department's approval of such a designation under §2.47 of this subchapter (relating to Approval of Local Government as Project Sponsor).

(b) Form. The project scope must be prepared using standardized information requirements approved by the Environmental Affairs Division. The Environmental Affairs Division will establish the required content for development of a project scope. A project scope may be prepared electronically in the department's environmental database. The level of detail for any issue on the scope should be commensurate with the nature of the highway project and the potential complexity and risk of the issue.

(c) Optional agreement between local government project sponsor and department. Notwithstanding any provision of this subchapter, the project scope may include the department delegate's agreement to complete a task that §2.43 of this subchapter (relating to Project Sponsor Responsibilities) otherwise directs is the responsibility of the project sponsor. Any such agreement must clearly identify the task that the department delegate has agreed to complete.

(d) Participation by FHWA. For a highway project for which an environmental decision requires FHWA approval, the FHWA may also be a party to the project scope. The project sponsor and department delegate will determine whether to invite FHWA to be a party to the project scope as soon as possible, but in no event later than the initial meeting between the project sponsor and the department delegate. Any matter agreed to by the project sponsor and the department delegate in the project scope, including the anticipated classification, may be subject to FHWA approval for an FHWA transportation project.

(e) Deadline for issuing classification letter. For projects for which a local government proposes to be the project sponsor, the department delegate will issue to the local government on or before the 30th day after the date that the local government submits its proposed project scope to the department delegate, a letter indicating the anticipated classification of the project based on the information provided by the local government. If the department delegate indicates its approval of the project scope by signing it on or before the 30th day after the date that the local government submits its proposed project scope to the department delegate, a separate classification letter is not required.

(f) Receipt of optional fee. If the project sponsor is a local government that proposes to pay an optional fee under §2.46 of this subchapter (relating to Optional Payment of Fee by Local Government), the fee must be received by the department before the department delegate may indicate its approval of the project scope by signing it.

(g) Amendment of project scope. The project sponsor shall promptly notify the department delegate of any change in the description of the project. If, after completion of the project scope, there is a material change in the description of the project, or any other change that materially affects how the project sponsor will satisfy the requirements of this chapter, the project scope must be amended accordingly. An amendment must be agreed to in writing by the project sponsor and the department delegate.

§2.48. Administrative Completeness Review.

(a) Administrative completeness required. All draft EAs, FEISs, documented reevaluations, and CEs for which a narrative document, rather than a checklist, is prepared [~~environmental review documents~~] must be determined to be administratively complete by the department delegate before it begins a technical review. After a document is declared to be administratively complete, no further administrative completeness review is required for future revised, amended, or final versions of that document. [~~This section does not apply to categorically excluded projects for which an environmental issues checklist is prepared because, for these projects, there is no environmental review document.~~]

(b) Initiation of review. To initiate administrative completeness review of an environmental review document, the project sponsor will submit the document to the department delegate with a written statement that the document is administratively complete, ready for technical review, and compliant with all applicable requirements.

(c) Project sponsor's deadline to submit certain types of documents.

(1) Applicability. This subsection applies to EAs, and FEISs, but does not apply if the project sponsor is a local government that has paid a fee under §2.46 of this subchapter (relating to Optional Payment of Fee by Local Government).

(2) Deadline. The project sponsor will submit to the department delegate for administrative completeness review any environmental review document subject to this subsection at least two years before the date planned for publishing notice to let the construction contract for the project, as indicated in whichever of the following documents was most recently approved:

(A) the financially constrained portion of:

(i) the approved state transportation improvement program; or

(ii) the approved unified transportation program; or

(B) a commission order identifying the project as being eligible for environmental review.

(3) Date planned for publishing letting notice. If the date planned for publishing letting notice described in paragraph (2) of this subsection is identified in the applicable document only by the fiscal year, for the purposes of this subsection the date is September 1 of the previous year. If it is identified only by the calendar year, for the purposes of this subsection the date is January 1 of that year. If it is identified only by month and year, for the purposes of this section it is the first day of that month.

(4) No waiting period for letting contract. This subsection does not require that the project sponsor wait any amount of time after the department delegate renders an environmental decision under §2.49 of this subchapter (relating to Technical Review) before letting the construction contract for the project.

(d) Requirements for administrative completeness. The department delegate will not determine an environmental review document to be administratively complete unless it determines that:

(1) the description of the project is the same as shown in the project scope prepared under §2.44 of this subchapter (relating to Project Scope) including any amendments of the project scope;

(2) the document contains a discussion of each issue required to be addressed in the document by the project scope;

(3) all surveys and studies required by the project scope have been completed and are documented in the environmental review document, and any environmental reports prepared have been submitted to the department delegate;

(4) all coordination with agencies required by the project scope to be completed before approval of the environmental review document has been completed, and both agencies' comments and the project sponsor's responses to those comments are documented in the environmental review document;

(5) any other tasks required by the project scope before submission of the environmental review document have been completed and documented; and

(6) any other tasks required by the project scope to be undertaken after approval of the environmental review document are appropriately identified in writing.

(e) Deadline for determination. Not later than the 20th day after the date the department delegate receives the project sponsor's environmental review document for administrative completeness review, the department delegate will:

(1) issue a letter confirming that the document is administratively complete and ready for technical review; or

(2) decline to issue a letter confirming that the document is administratively complete and ready for technical review, and instead send a written response to the project sponsor specifying in reasonable detail the basis for the department delegate's conclusions, including a listing of any required information determined by the department delegate to be missing from the document.

(f) Cooperation by department delegate. If the department delegate declines to issue a letter confirming that an environmental review document is administratively complete under subsection (e) of this section, the department delegate will undertake all reasonable efforts to cooperate with the project sponsor in a timely manner to ensure that the environmental review document is administratively complete.

(g) Re-submittal. The project sponsor may revise and re-submit any environmental review document determined by the department delegate to not be administratively complete. The department delegate will, in accordance with subsection (e) of this section, issue a determination letter on the re-submitted document not later than the 20th day after the date the department delegate receives it. There is no limit on the number of times an environmental review document may be revised and re-submitted under this subsection.

§2.49. Technical Review.

(a) Environmental issues checklist. For categorically excluded projects for which an environmental issues checklist is prepared, the department delegate will begin a technical review of the documentation of categorical exclusion when it is received from the project sponsor, or in the case of an electronic checklist, when the project sponsor indicates that the checklist is ready for review. The project sponsor shall ensure that all tasks and coordination required prior to making the environmental decision are complete when the documentation or electronic checklist is submitted for technical review.

(b) Environmental review document. The department delegate will begin a technical review of a draft EA, FEIS, documented reevaluation, or a CE for which a narrative document, rather than a checklist, is prepared [~~an environmental review document~~] when the department delegate determines that it is administratively complete under §2.48 of this subchapter (relating to Administrative Completeness Review). The department delegate will begin a technical review of a DEIS when it is received from the project sponsor.

(c) Purpose. The purpose of a technical review is for the department delegate to confirm that:

(1) for a categorically excluded project for which an environmental issues checklist is prepared, the documentation provided by the project sponsor shows that the project qualifies as a categorically excluded project, as applicable; or

(2) for all other projects, the environmental review document prepared by the project sponsor is:

(A) an evaluation of all required subject areas;

(B) written in a professional and understandable manner;

(C) based on sound reasoning and accepted scientific and engineering principles; and

(D) legally sufficient, including satisfying the requirements of Subchapter D of this chapter (relating to Requirements for Classes of Projects).

(d) Disapproval. The department delegate may conclude that the environmental review document or documentation of categorical exclusion cannot be approved because it does not meet the requirements of this section. The department delegate will provide the project sponsor with a written explanation for its disapproval of an environmental review document or documentation of categorical exclusion.

§2.50. Deadlines for Completing Certain Types of Technical Reviews; Suspension of Review Deadlines.

(a) Deadlines. This subsection sets out the deadlines that apply to the department delegate's technical review.

(1) CEs. For a highway project classified as a CE, the department delegate will render an environmental decision not later than the 90th day after it receives the environmental issues checklist, or, for CEs for which an environmental review document is prepared, not later than the 90th day after it determines that the environmental review document is administratively complete under §2.48 of this subchapter (relating to Administrative Completeness Review). For purposes of this paragraph, the department delegate renders an environmental decision by:

(A) approving documentation showing the project meets applicable CE criteria under §2.81 of this chapter (relating to Categorical Exclusions) or declining in writing to do so; or

(B) for an FHWA transportation project, by forwarding such documentation to FHWA with an appropriate recommendation.

(2) EAs. This paragraph provides the deadlines for a highway project that requires the preparation of an EA.

(A) Comment deadline. The department delegate will provide to the project sponsor any department comments on the EA not later than the 90th day after the day that the department delegate determines that the EA is administratively complete under §2.48 of this subchapter.

(B) Environmental decision deadline. The department delegate will render an environmental decision not later than the 60th day after the later of:

(i) the date that the department delegate receives from the project sponsor a revised EA responsive to and in satisfaction of comments provided by the department delegate under subparagraph (A) of this paragraph; or

(ii) the date the public participation process concludes, which is:

(I) if no hearing is held and no public comments are received on the draft EA, the date on which the project sponsor submits to the department delegate a written confirmation that no further public participation is required and none will be conducted; or

(II) if a hearing is held or public comments are received on the draft EA, [~~which if a public hearing is held, is~~] the date that the project sponsor submits to the department delegate the documentation of public hearing required by §2.107 of this chapter (relating to Public Hearing), if applicable, and a revised EA responsive to any public comments received.

(3) Rendering an environmental decision on an EA. For the purposes of paragraph (2)(B) of this subsection, the department delegate renders an environmental decision by:

(A) issuing a written FONSI, as provided by §2.83 of this chapter (relating to Environmental Assessments) or declining in writing to do so; or

(B) for an FHWA transportation project, forwarding the EA and other documentation to FHWA with an appropriate recommendation.

(4) EISs. For a highway project that requires an EIS, the department delegate will render an environmental decision not later than the 120th day after the date the department delegate determines that the project sponsor's draft of the final EIS is administratively complete under §2.48 of this subchapter. For purposes of this paragraph, the department delegate renders an environmental decision by:

(A) signing and dating the FEIS cover page as provided for by §2.84 of this chapter (relating to Environmental Impact Statements) or declining in writing to do so; or

(B) for an FHWA transportation project, forwarding the FEIS to FHWA with an appropriate recommendation.

(5) Reevaluations. For a highway project that requires a documented reevaluation, the department delegate will render an environmental decision not later than the 120th day after the date the department delegate determines that the documented reevaluation document is administratively complete under §2.48 of this subchapter. For the purposes of this paragraph, the department delegate renders an environmental decision by:

(A) signing and dating the documented reevaluation or declining in writing to do so; or

(B) for an FHWA transportation project, forwarding the documented reevaluation to FHWA with an appropriate recommendation.

(b) Suspension of technical review deadlines.

(1) Amendments, corrections, and revisions.

(A) If, at any time during its technical review, the department delegate identifies deficiencies, errors, or needed revisions in an environmental review document or documentation of categorical exclusion, the department delegate will notify, in writing, the project sponsor that it is suspending its technical review, and identify any needed amendments, corrections, and revisions.

(B) The department delegate will provide to the project sponsor any comments, if possible, in a single set of comments unless the project sponsor and department delegate agree to process comments in batches, which may result in multiple suspensions of the technical review deadline under this subsection.

(C) The project sponsor may make any corrections or revisions to the environmental review document or documentation of categorical exclusion identified by the department delegate, and re-submit the revised documentation in whole or in part, as appropriate, for continuation of technical review.

(D) The department delegate's compliance with the deadlines set forth in subsection (a) of this section is suspended from the time the department delegate provides written notice under subparagraph (A) of this paragraph until the time the project sponsor re-submits the environmental review document or documentation of categorical exclusion, in whole or in part, in accordance with subparagraph (C) of this paragraph.

(2) Additional work regarding highway project.

(A) If, at any time during technical review, the project becomes the subject of additional work, including a design change or

identification and resolution of new significant issues, the project sponsor will notify the department delegate in writing.

(B) If the department delegate determines that a design change is material, compliance with the deadlines set forth in subsection (a) of this section is suspended from the time the department delegate provides written notice of its determination to the project sponsor until the project sponsor gives written notice to the department delegate that the additional work is completed and, if appropriate, submits a revised environmental review document or documentation of categorical exclusion, in whole or in part, reflecting the outcome of the additional work.

(C) If as a result of additional work the classification of the project changes, technical review under this section is terminated, and the project sponsor may submit the new environmental review document or documentation of categorical exclusion to the department delegate under §2.48 of this subchapter.

(3) Issues raised by the department's legal counsel. If, at any time during technical review, the department delegate provides written notice to the project sponsor of an issue concerning compliance with applicable law identified by the department's legal counsel, compliance with the deadlines set forth in subsection (a) of this section is suspended from the time the department delegate provides that notice until the time that the project sponsor provides a satisfactory written response to the department delegate and, if appropriate, submits a revised environmental review document or documentation of categorical exclusion, in whole or in part, reflecting any warranted changes.

(4) Number of suspensions. There is no limit on the number of times technical review of an environmental review document or documentation of categorical exclusion may be suspended as provided by this subsection. The department will use its best efforts to minimize the number and duration of suspensions of technical reviews.

(5) Suspension by agreement. The project sponsor and department delegate may suspend compliance with the deadlines set forth in subsection (a) of this section at any time by written agreement, in which case the deadlines are suspended until the project sponsor and department delegate lift the suspension and resume technical review by written agreement.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

43 TAC §§2.81, 2.83 - 2.85

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.81. Categorical Exclusions.

(a) Applicability.

(1) This section applies to a transportation project that is classified by the department delegate as a CE. A CE is a category of actions that have been found to have no significant effect on the environment, individually or cumulatively.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (e) of this section applies only if the project is an FHWA transportation project.

(3) This section does not apply to the purchase of an option to acquire real property, or to the exercise of an option or other early and advance acquisition of land. The required environmental review for those types of transactions is specified in §2.131 of this chapter (relating to Advance Acquisition of Right-of-Way [~~Special Right-of-Way Acquisition~~]).

(b) Approval for classification as CE.

(1) If the project sponsor satisfies the requirements of this subsection the department delegate may approve the classification of a transportation project as a CE.

(2) The project sponsor will submit to the department delegate documentation that is an environmental issues checklist showing compliance with the section. The checklist may be prepared electronically in the department's environmental database. A categorical exclusion determination in the form of a checklist is not an environmental review document. However, if required by the FHWA for an FHWA transportation project, the project sponsor must submit, instead of a checklist, a brief environmental review document discussing and analyzing the potential environmental impacts. If the department delegate determines that a transportation project qualifies as a CE, it will document that determination in the project file.

(3) The environmental issues checklist must show that the project does not violate the restrictions in subsection (c) of this section and that significant environmental impacts will not result based on the results of an evaluation of the project. The project sponsor must indicate if coordination is required, and if so, the portion of coordination that can be completed before final approval of the environmental review document has been completed.

(4) An environmental issues checklist is not required for a project covered under a programmatic CE issued by the department's environmental affairs division.

(c) Restrictions on classification.

(1) A CE project directly, indirectly, or cumulatively, may not:

(A) induce significant impacts to planned growth or land use for the area;

(B) cause any significant environmental impacts to any natural, cultural, recreational, historic, or other resource;

(C) cause any significant impacts to air, noise, or water quality;

(D) relocate significant numbers of people; or

(E) cause significant impacts on travel patterns.

(2) The CE action may not involve unusual circumstances or lead to:

(A) significant environmental impacts;

(B) substantial controversy on environmental grounds; or

(C) inconsistencies with federal or state law.

(d) Categories of projects. For a state transportation project or an FHWA transportation project, the categories of projects listed at 23 C.F.R. §771.117(c) and (d) normally will qualify as categorical exclusions, unless unusual circumstances make the project ineligible for designation as a categorical exclusion under subsection (c) of this section. The categories of projects listed at 23 C.F.R. §771.117(c) and (d) are not the only types of projects that may qualify as categorical exclusions.

(e) FHWA transportation projects.

(1) For an FHWA transportation project, in addition to subsections (a) - (d) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as a CE.

(2) If federal law, including FHWA's rules, or a programmatic agreement conflicts with this chapter, the federal law or programmatic agreement provision controls to the extent of the conflict.

§2.83. Environmental Assessments.

(a) Applicability.

(1) This section applies to a transportation project that the department delegate has not classified as a categorical exclusion and that does not clearly require the preparation of an EIS, or if the department delegate believes an EA would assist in determining the need for an EIS.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (i) of this section applies only if the project is an FHWA transportation project.

(b) Purpose and content.

(1) An EA describes the purpose and need for the project, any alternatives considered, any mitigation measures that are to be incorporated into the project, and the extent of environmental impact, including direct, indirect, and cumulative impacts. The project sponsor will investigate environmental impacts and prepare an EA to determine the nature and extent of environmental impacts, and to provide full disclosure of project impacts to the public.

(2) If, taking into account any mitigation measures or commitments documented in the EA, the EA shows that the environmental impacts are not significant, the EA will conclude with a FONSI. If, taking into account any mitigation measures or commitments documented in the EA, the EA shows that the impacts are significant, the EA will conclude that an EIS is required.

(c) Coordination. The project sponsor will comply with §2.12 of this chapter (relating to Project Coordination), and will include in the EA the results of coordination [~~and a summary of the contacts with agencies and the comments received~~].

(d) Public participation. The project sponsor will conduct appropriate public participation in accordance with Subchapter E of this chapter (relating to public participation) and will include in the EA the results of public participation and the comments received. If changes resulting from public participation are minimal, the project sponsor may incorporate the results into the EA by appending errata sheets, rather than revising the EA as a whole.

(e) Organization of EA. To the maximum extent possible, an EA should summarize and incorporate by reference any separately prepared environmental reports supporting the EA's conclusions. If these reports are not included as appendices, the reports must be available for public inspection on request.

(f) Circulation of draft EA. The project sponsor may not disclose a draft of an EA before public disclosure of the EA is approved by the department delegate or, for an FHWA transportation project, by FHWA. The project sponsor will comply with §2.108 of this chapter (relating to Notice of Availability).

(g) Change in determination of impact. If the department delegate, taking into account any mitigation measures or commitments documented in the EA, determines at any point prior to the issuance of a FONSI that the project may have a significant impact on social, economic, or environmental concerns, the department delegate will direct the project sponsor to prepare an EIS.

(h) Preparation of FONSI.

(1) Finding of no significant impact (FONSI) means a document that is issued by the department delegate that briefly presents the reasons why, taking into account any mitigation measures or commitments documented in the EA, the transportation project will not have a significant effect on the human environment and, therefore, for which an environmental impact statement will not be prepared. To describe the impacts of the project, and to identify any mitigation measures or commitments that factor into the determination that impacts are not significant, a FONSI will reference the EA and any other environmental documents related to the FONSI rather than repeating the information contained in those documents within the body of the FONSI.

(2) The department delegate will review the EA, any proposed mitigation measures, the results of project coordination, and if a public hearing was held, the documentation of public hearing required by §2.107 of this chapter (relating to Public Hearing) [~~summary and analysis~~]. The department delegate, if appropriate, will present the decision in a written FONSI.

(3) The project sponsor will give notice of availability of a FONSI in accordance with §2.108 of this chapter.

(i) FHWA transportation project. For an FHWA transportation project, in addition to the requirements of subsections (a) - (h) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as an EA. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of the technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

§2.84. Environmental Impact Statements.

(a) Applicability.

(1) This section applies to a transportation project if there are likely to be significant environmental impacts or if the project is of a type for which an EIS is typically prepared. The project sponsor will prepare an EIS that is a detailed public disclosure document that evaluates the impacts of the project.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (g) [~~(f)~~] of this section applies only if the project is an FHWA transportation project.

(b) Content.

(1) An EIS must include:

(A) a discussion of the purpose and need for the project;

(B) an evaluation of all reasonable alternatives satisfying the purpose and need, their associated social, economic, and environmental impacts, an evaluation of alternatives eliminated from detailed study, and a determination of the preferred alternative;

(C) a summary of studies conducted to determine the nature and extent of environmental impacts;

(D) a description of the environmental impact of the project, any unavoidable adverse environmental impacts and associated measures to minimize harm, and any irreversible and irretrievable commitments of resources involved if the project is implemented;

(E) a description of the direct, indirect, and cumulative effects of the project; and

(F) a discussion of compliance with all applicable laws or reasonable assurances that the requirements can be met, and a description of the mitigation measures that are to be incorporated into the project.

(2) Coordination. The project sponsor will comply with §2.12 of this chapter (relating to Project Coordination), and will include in the EIS the results of coordination conducted before final approval of the EIS [~~and a summary of the contacts with agencies and the comments received~~].

(3) Public participation. The project sponsor will conduct appropriate public participation in accordance with Subchapter E of this chapter (relating to Public Participation) and will include in the EIS the results of public participation and the comments received.

(4) Organization. To the maximum extent possible, an EIS should summarize, incorporate by reference and include as appendices any separately prepared environmental reports supporting the EIS's conclusions, rather than repeat the detailed information from environmental reports in the body of the EIS.

(c) Processing the EIS.

(1) The project sponsor will in the following order:

(A) publish a notice of intent under §2.102 of this chapter (relating to Notice of Intent (NOI)) and develop a coordination plan under §2.103 of this chapter (relating to Coordination Plan for EIS);

(B) conduct public participation and coordination in the manner and at the times prescribed by law;

(C) prepare the draft EIS (DEIS);

(D) issue [~~publish~~] the notice of availability of the DEIS;

(E) conduct the public hearing;

(F) prepare the final EIS (FEIS);

(G) issue [~~publish~~] the notice of availability of the FEIS; and

(H) prepare the [~~a draft~~] record of decision (ROD).

(2) Accelerated Decision-making.

(A) If public comments are minor, and changes are limited to factual corrections or explanations of why comments do not warrant additional agency response, the project sponsor may prepare errata sheets and attach them to the DEIS, rather than preparing the FEIS. When errata sheets are attached to the DEIS in lieu of a separately prepared FEIS, all other applicable requirements for completing the EIS set forth in subsection (e) [~~(e)(1) - (6)~~] of this section apply.

(B) The project sponsor may prepare the FEIS and [~~draft~~] ROD as a single document unless:

(i) the FEIS makes substantial changes to the proposed project that are relevant to environmental or safety concerns; or

(ii) there are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or the impacts of the proposed action.

(3) The project sponsor will prepare a supplemental DEIS, a supplemental FEIS, or both if required by §2.86 of this subchapter (relating to Supplemental Environmental Impact Statements).

(d) Preparation of DEIS.

(1) The project sponsor will prepare a DEIS that meets the requirements of subsection (b) of this section. A preferred alternative may be designated, if appropriate. The preferred alternative may be developed to a higher level of detail than other alternatives. The higher level detail must be limited to work necessary for preliminary design, as described by paragraph (5) of this subsection. The department delegate will review, and will approve the development of the preferred alternative to a higher level of detail if appropriate, and only if that development does not prevent the department from making an impartial decision as to whether to accept another alternative under consideration in the environmental review process.

(2) The DEIS is subject to the department delegate's approval before it is made available to the public as a department document. For highway projects processed under Subchapter C of this chapter (relating to Environmental Review Process for Highway Projects), the DEIS is approved for public review on the department delegate's completing the technical review of the DEIS under §2.49 of this chapter (relating to Technical Review).

(3) After the department delegate approves the DEIS, the project sponsor will circulate the DEIS and give notice of its availability in accordance with §2.108 of this chapter (relating to Notice of Availability).

(4) After the DEIS is circulated, public hearing held, and comments reviewed, the project sponsor will prepare an FEIS, or a supplemental DEIS if required.

(5) For the purposes of paragraph (1) of this subsection, preliminary design defines the general project location and design concepts. It includes, but is not limited to, preliminary engineering and other activities and analyses, such as environmental investigations, topographic surveys, metes and bounds surveys, geotechnical investigations, hydrologic analysis, hydraulic analysis, utility engineering, traffic studies, financial plans, revenue estimates, hazardous materials assessments, general estimates of the types and quantities of materials, and other work needed to establish parameters for the final design.

(e) Preparation of FEIS.

(1) The project sponsor will prepare an FEIS that meets the requirements of subsection (b) of this section and will prepare a public hearing record under §2.107 of this chapter (relating to Public Hearing). The FEIS may consist of the DEIS and attached errata sheets, if appropriate.

(2) After the department delegate approves the FEIS, the project sponsor will circulate the FEIS and issue [~~publish~~] notice of its availability in accordance with §2.108 of this chapter.

(f) Preparation of ROD.

(1) The department delegate will issue a ROD that:

(A) presents the basis for the department's decision;

(B) identifies all alternatives considered;

(C) specifies the alternative or alternatives that were considered to be environmentally preferable;

(D) states whether all practical means to avoid or minimize environmental harm have been adopted, and if practical means were not adopted, why they were not adopted; and

(E) summarizes mitigation measures.

(2) If the FEIS and ROD are prepared as a single document, the document will indicate on the cover of the document that it is both the FEIS and ROD, and the department delegate's approval of that document represents approval of both the FEIS and ROD.

(3) If the FEIS and ROD are not prepared as a single document, the department delegate will complete and sign the ROD not earlier than the 30th day after the date that the notice of the availability of the FEIS is published in the *Texas Register,* and the department delegate will separately issue notice of the availability of the ROD in accordance with §2.108 of this chapter.

(4) Until the ROD is signed, neither the department nor any local government project sponsor may take any action concerning the project that would have an adverse environmental impact or limit the choice of reasonable alternatives.

~~[(3) The department delegate will complete and sign a record of decision (ROD) not earlier than the 30th day after the date of the publication of the availability of the FEIS notice in the *Texas Register.* The ROD will present the basis for the decision, summarize the department's responses to comments received, and summarize any mitigation measures and commitments. If the FEIS and ROD are a single document, the cover page must have separate signature blocks for the FEIS and the ROD. The department delegate will indicate approval of the ROD by signing the cover page not earlier than the 30th day after the date of the availability of the FEIS notice is published in the *Texas Register.*]~~

~~[(4) The department delegate will publish notice of the availability of the ROD in accordance with §2.108 of this chapter.]~~

~~[(5) Until the required ROD is signed, no further approvals may be given except for administrative activities taken to secure further project funding.]~~

(5) [~~(6)~~] If after a ROD is issued for a project the department approves an alternative that was not identified as the preferred alternative, the department delegate will prepare a revised ROD and will publish notice of the availability of the revised ROD in accordance with §2.108 of this chapter.

(g) [~~(f)~~] FHWA transportation project. For an FHWA transportation project, in addition to subsections (a) - (g) [~~(e)~~] of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as an EIS. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

§2.85. Reevaluations.

(a) Applicability.

(1) This section applies to a transportation project that is classified by the department delegate as a CE, EA, or EIS.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (d) of this section applies only if the project is an FHWA transportation project.

(b) Purpose and content.

(1) A documented reevaluation of a DEIS, which may be in the form of a checklist, will be prepared by the project sponsor in cooperation with the department delegate if an acceptable FEIS is not submitted to the department delegate within three years after the date that the DEIS is circulated. The purpose of this reevaluation is to determine whether or not a supplement to the DEIS or a new DEIS is needed.

(2) A documented reevaluation of a FEIS, which may be in the form of a checklist, will be required before further approvals may be granted if major steps to advance the project, such as authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications, and estimates, have not occurred within three years after the date of the approval of the FEIS, FEIS supplement, or the last major department approval or grant.

(3) A consultation reevaluation will be required after [~~After~~] approval of a [~~the~~] ROD, FONSI, or CE designation if changed circumstances could affect the continued validity of the ROD, FONSI, or CE designation. When a consultation reevaluation is required, the project sponsor will consult with the department delegate before requesting any major approvals or grants from the department to establish whether or not the approved environmental document or CE designation remains valid for the project. The project sponsor will record the consultation reevaluation in the project file. [~~These consultations will be documented if determined necessary by the department delegate.~~] If, as a result of consultation, the department delegate determines that a documented [~~a~~] reevaluation is appropriate [~~necessary~~], the project sponsor shall prepare a documented reevaluation, which may be in the form of a checklist.

(c) Coordination. The department delegate may require the project sponsor to carry out coordination under §2.12 of this chapter (relating to Project Coordination).

(d) FHWA transportation project. For an FHWA transportation project, in addition to subsections (a) - (c) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the reevaluation. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict. At the conclusion of technical review, the department delegate will forward the environmental review document and any other relevant documentation to FHWA with an appropriate recommendation.

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

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SUBCHAPTER E. PUBLIC PARTICIPATION

43 TAC §§2.102, 2.104 - 2.108, 2.110

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.102. Notice of Intent (NOI).

(a) Purpose. An NOI formally initiates the process for preparing an EIS or a supplemental EIS.

(b) Notice of Intent Required. The project sponsor will prepare an NOI before the preparation of an EIS or supplemental EIS. An NOI must be prepared according to guidelines and procedures established by the department. The department delegate will review the NOI and submit it for publication in the *Texas Register* if the project is a state transportation project or in the *Federal Register* if the project is an FHWA transportation project [~~before the preparation of the EIS or supplemental EIS~~].

[~~(c) Notice Requirements. The project sponsor will publish the approved NOI in the Texas Register and in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish the NOI in any newspaper having general circulation in the area affected by the project.~~]

§2.104. Meeting with Affected Property Owners (MAPO).

(a) Purpose. A MAPO is an informal meeting to inform affected property owners of impacts that may result from a project. The requirements of this section may be met by telephone, in-person, or written contact with affected property owners.

(b) When to conduct MAPO.

(1) The project sponsor will hold one or more MAPOs prior to the environmental decision if a project requires a detour, road or bridge closure, [~~detours, a~~] minimal amount of right-of-way acquisition, or temporary construction easement [~~easements~~].

(2) The project sponsor will hold a MAPO in addition to any previous public participation if a location or design revision occurs after public participation requirements have been completed that would result in a substantial change in the impacts previously disclosed to the affected property owner.

(3) The project sponsor may hold a MAPO for any project to supplement other required public participation. A MAPO may be used to engage an affected property owner throughout the process.

(4) The affected property owners include:

(A) owners of property adjacent to the project; and

(B) other affected property owners, such as a business or governmental entity that may be affected by the project.

(c) Notice Requirements. The project sponsor may select appropriate outreach methods to inform property owners of a MAPO.

(d) Documentation requirements. The project sponsor will maintain records of all MAPOs in the project file, and will forward those records to the department delegate on request.

§2.105. Public Meeting.

(a) Purpose. [~~A public meeting is held for the purpose of exchanging ideas and collecting input on the need for, possible alternatives to, and potential impacts of a project.~~] Public meetings are intended to gather input from the public and keep the public informed during the development of a project. [~~Public meetings include meetings with interested citizens, the general public, or local, neighborhood, or special interest groups.~~]

(b) When to hold a Public Meeting.

(1) A project sponsor may hold one or more public meetings for any project. The decision to hold a public meeting should be based on the project's type, complexity, and level of public concern [~~that is based on environmental issues~~].

(2) The project sponsor shall hold a public meeting during the drafting of a DEIS to present the draft coordination plan.

(c) Notice Requirements. The project sponsor may select one or more appropriate outreach methods to inform the public of a public meeting. Outreach methods will be appropriate for the anticipated audience to maximize attendance.

(d) Documentation Requirements. After a public meeting, the project sponsor will assemble documentation of the public meeting. [~~prepare a written summary of the meeting, including the comments received, responses to comments, and modifications, if any, to the project resulting from the comments.~~] The public meeting documentation [~~written summary~~] will be forwarded to the department delegate for review and maintained in the project file.

§2.106. Opportunity for Public Hearing.

(a) Purpose. An opportunity for a public hearing permits the public to request a public hearing for a project when the project sponsor is not otherwise obligated to hold a public hearing.

(b) When to afford an opportunity for public hearing.

(1) The project sponsor will afford an opportunity for a public hearing for a project if:

(A) the project requires the acquisition of significant amounts of right-of-way;

(B) the project substantially changes the layout or function of connecting roadways or of the facility being improved;

(C) the project adds through-lane capacity, not including auxiliary lanes or other lanes less than one mile in length;

(D) the project has a substantial adverse impact on abutting real property; or

(E) the project is the subject of an environmental assessment. [the results of environmental studies support a FONSI; or]

[(F) the project sponsor or department delegate determines it is in the public interest.]

(2) A project sponsor is not required to comply with this section if the project sponsor holds a public hearing for the project under §2.107 of this subchapter (relating to Public Hearing).

(c) Notice Requirements.

(1) The project sponsor will publish, at a minimum, one notice of the opportunity to request a public hearing in a local newspaper having general circulation. The notice shall be published before the 30th day before [at least 30 days prior to] the deadline for submission of written requests for holding a public hearing. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project.

(2) In addition, the project sponsor will select a minimum of one additional outreach method to inform the public of an opportunity to request a public hearing.

(3) The project sponsor will mail notice of the opportunity to request a public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.

(d) Procedural Requirements.

(1) The project sponsor will provide notice of the opportunity after location and design studies are developed and the environmental review document or documentation of categorical exclusion is approved for public disclosure by the department delegate.

(2) A public hearing is not required under this section if, at the end of the time set for affording an opportunity to request a public hearing, no requests have been received or the project sponsor has addressed all concerns of the persons requesting the public hearing.

(e) Documentation Requirements. If, after providing an opportunity for a public hearing under this section, the project sponsor does not hold a public hearing, the project sponsor will submit to the department delegate an original certification of the public participation process [signed by the department public hearing officer] containing a statement that the requirements of this section have been met.

§2.107. Public Hearing.

(a) Purpose. A public hearing is held to present project alternatives and to encourage and solicit public comment.

(b) When to hold a public hearing. A project sponsor will hold a public hearing if:

(1) a request for hearing is received under §2.106 of this subchapter (relating to Opportunity for Public Hearing);

(2) ten or more individuals submit a written request for a hearing, except that a public hearing is not required under this paragraph if a public hearing has been held concerning the project before the requests are received or if the hearing requests are received after the environmental review document or documentation of categorical exclusion for the project is approved; [or]

(3) the department delegate determines it is in the public interest; or

(4) [(3)] the project is:

(A) a project with substantial public interest or controversy;

(B) an EIS project; or

[(C) a high-profile project;]

(C) [(D)] a project that constructs a new highway [facility] on a new location.[;]

[(E) a project that requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site or scientific area, as covered in the Parks and Wildlife Code, Chapter 26; or]

[(F) a project that requires the use or taking of private land encumbered by an agricultural conservation easement purchased under Natural Resources Code, Chapter 183.]

(c) Notice requirements.

(1) At a minimum, the project sponsor will publish, before the 15th day [at least 30 days] before the day of a public hearing, one notice of the hearing in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project. For a project that constructs a reliever route, notice must also be published in a newspaper of general circulation in the bypassed area.

(2) In addition to the other notice required by this subsection, the project sponsor will select a minimum of one additional outreach method to inform the public of the public hearing.

(3) The project sponsor will mail notice of the public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.

[(4) For projects requiring the use or taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area under Parks and Wildlife Code, Chapter 26, the project sponsor shall publish notice in accordance with this paragraph.]

[(A) The notice must be given in writing to the person, organization, department, or agency that has supervision of the land proposed to be used or taken at least 30 days before the date for the public hearing.]

[(B) The notice must be published in a newspaper, as specified in the subparagraph, once a week for three consecutive weeks. The last date of publication may not be less than one week or more than two weeks before the date of the hearing. The notice must be published in a newspaper of general circulation that is published at least six days a week in the county where the land proposed to be used or taken is situated or if such a newspaper does not exist in that county, in any county adjoining the county where the land is situated. If such newspaper is not published in any adjoining county, the notice must be published in the nearest county to where the land is situated.]

(d) Procedural requirements.

(1) The hearing will be held after location and design studies are developed and the environmental review document or documen-

tation of categorical exclusion is approved for public disclosure by the department delegate.

(2) The project sponsor will make the maps, drawings, environmental reports, and documents concerning the project available to the public for not less than the 15 [~~30~~] consecutive days before the date of the public hearing.

(3) The project sponsor shall establish a deadline for accepting public comments of not less than 15 [~~10~~] days after the date of the public hearing. [~~For an EIS project, the project sponsor shall establish a deadline for accepting public comments of not less than 15 days after the date of the public hearing.~~]

(e) Documentation requirements.

(1) After a public hearing, the project sponsor will assemble documentation of the public hearing. The public hearing documentation will be forwarded to the department delegate for review and maintained in the project file.

[~~(1) After the public hearing, the project sponsor will submit to the department delegate a public hearing summary and analysis that includes:~~]

[~~(A) two copies of the verbatim transcript;~~]

[~~(B) a comment and response report; and~~]

[~~(C) the original certification of the public participation process that conforms to guidelines established by the department and signed by the department public hearing officer.~~]

(2) For a public hearing regarding an EIS, the project sponsor will document the number of positive, negative, and neutral public comments received in accordance with Transportation Code, §201.811(b). This information must be presented to the commission in an open meeting and reported on the department's website in a timely manner.

§2.108. Notice of Availability.

(a) Purpose. A notice of availability is issued [~~published~~] to inform the public or recipient of when certain important documents are available for review, and how to obtain copies of those documents.

(b) When to issue [~~publish~~] notice. A notice of availability is required for:

(1) a draft [~~an~~] EA;

(2) a FONSI;

(3) a DEIS;

(4) a FEIS; or

(5) a ROD.

(c) Notice requirements.

(1) The project sponsor will send copies of all notices of availability to the appropriate metropolitan planning organization and agencies that have submitted written comments on the project. The copy of a notice with instructions on how to access the document electronically, may be provided by e-mail if the recipient has provided the department with an e-mail address. [~~with an interest in the project.~~] If the entity [~~agency~~] will receive a full copy of the document, it is not necessary to also send a notice of availability.

(2) The project sponsor, in collaboration with the department delegate, will publish a notice of availability on the department website regarding a FONSI, DEIS, FEIS, [~~or~~] ROD, or draft EA. [~~on the department website.~~]

(3) The project sponsor, in collaboration with the department delegate, will publish in a local newspaper having general circulation in the area affected by the project a notice of availability regarding a draft EA for which no public hearing is held or an FEIS. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project.

(4) [~~(3)~~] The department delegate also must submit for publication [~~publish~~] a notice of availability regarding a DEIS, FEIS or ROD in the *Texas Register* if the project is a state transportation project or in the *Federal Register* if the project is an FHWA transportation project. For an NOA for a DEIS published in the *Texas Register* or *Federal Register,* the NOA shall establish a period of not fewer than 45 days and no more than 60 days for the return of comments on the DEIS.

(5) [~~(4)~~] If the FEIS and ROD will be a single document, the notice of availability regarding the FEIS should indicate that fact. [~~A separate notice of availability is still required after the ROD is signed.~~]

§2.110. Notice of Impending Construction.

(a) Purpose. A notice of impending construction informs individuals affected by certain projects that construction will begin.

[~~(b) When to send notice. Notice of impending construction is required under Transportation Code, §203.022(c) for a project that involves either the addition of at least one travel lane or construction of a project on a new location.~~]

(b) [~~(c)~~] Notice Requirements under Transportation Code, §203.022(c). For a project that involves either the addition of at least one travel lane or construction of a highway on a new location, the project sponsor must provide owners of adjoining property and affected local governments and public officials with notice of impending construction by any means approved by the department's Environmental Affairs Division. The means of providing notice may include a sign or signs posted in the right-of-way, mailed notice, printed notice distributed by hand, or notice via website when the recipient has previously been informed of the relevant website address. The notice must be provided after a CE determination or issuance of a FONSI or ROD for the project, but before earthmoving or other activities requiring the use of heavy equipment begin. [~~Notice of impending construction will be sent to landowners abutting the roadway within the project limits as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.~~]

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

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SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

43 TAC §2.131

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.131. Advance Acquisition of Right-of-Way [~~Special Right-of-Way Acquisition~~].

(a) Advance acquisition. Nothing in this chapter prevents the department from acquiring real property for corridor preservation, access management, or other purposes before the completion of the environmental review process for a transportation project, subject to the requirements of this section.

[~~(a) Use or taking of designated public land.~~]

[~~(1) The department delegate may approve the use or taking of public land that is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site only if the department delegate determines:~~]

[~~(A) there is no feasible and prudent alternative to the use or taking of the land; and~~]

[~~(B) the project includes all reasonable planning to minimize harm to the land as a park, recreation area, scientific area, wildlife refuge, or historic site resulting from the use or taking, including mitigation measures.~~]

[~~(2) The department delegate may make a determination required under this subsection only after holding a properly noticed public hearing in accordance with §2.109 of this chapter (relating to Public Hearing).~~]

[~~(b) Use or taking of protected private land.~~]

[~~(1) The department delegate may approve the use or taking of private land encumbered by an agricultural conservation easement purchased under Natural Resources Code, Chapter 183 only if the department delegate determines:~~]

[~~(A) there is no feasible and prudent alternative to the use or taking of the land; and~~]

[~~(B) the project includes all reasonable planning to minimize harm to the land resulting from the use or taking.~~]

[~~(2) The department delegate may make a determination required under this subsection only at a properly noticed public hearing held in accordance with §2.109 of this chapter.~~]

[~~(c) Compliance with other requirements. If a project is subject to subsection (a) or (b) of this section, the department delegate and project sponsor also will require compliance with all applicable environmental analysis, documentation, and interagency coordination requirements in this chapter.~~]

[~~(d) Early and advance acquisition.~~]

[~~(1) The department may not acquire real property by early or advance acquisition without first completing a categorical exclusion analysis. The environmental affairs division shall establish standards for documentation of categorical exclusions related to early and advance acquisitions.~~]

(b) Certain public land. The department will not make an [~~early or~~] advance acquisition if it requires relocation or the use or taking of public land that is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site.

(c) No influence on environmental decision. Advance [~~Early or advance~~] acquisitions shall not influence any aspect of the final environmental decision, including any evaluation of build or no-build alternatives or alternative alignments for the transportation project.

(d) Due diligence report. Prior to finalizing advance acquisition of any real property, or purchasing an option to acquire real property prior to completion of the environmental review process, the department will complete a due diligence report. The report will assess the presence or likelihood of contamination and any other undesirable conditions on the real property, and whether the real property consists of any public land that is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site. The department will consider the information in the due diligence report prior to determining whether to acquire the real property.

[~~(2) The subject of any documentation of categorical exclusion under this subsection will be the acquisition of a specific parcel or group of parcels only, and shall not assume or imply approval of the related transportation project.~~]

[~~(3) An early or advance acquisition is considered an independent action. Documentation of categorical exclusion prepared for early or advance acquisition considers only impacts that result from the acquisition, and not impacts that may result from the proposed future transportation project.~~]

[~~(4) Documentation of categorical exclusion shall be maintained in the project file for the related transportation project. Documentation of categorical exclusion is not required for a construction project for which an environmental decision has been rendered.~~]

[~~(5) An option is an agreement by which the owner of a property conveys to the department the right to purchase the property on terms specified in the option. Exercising an option is the acquisition of property under an option agreement. The department may acquire an option, exercise an option, or both, before a final decision has been made as to whether the project will be located on the property that is the subject of the option. The department may purchase an option if the department conducts a site assessment and determines that the property does not appear to contain significant contamination of hazardous materials, or other potential environmental concerns. The purchase of an option is not an early or advance acquisition of property and does not require a categorical exclusion determination. The exercise of an option is a type of early and advance acquisition of property, and the requirements of paragraphs (1) - (4) of this subsection apply to the exercise.~~]

(e) [~~(6)~~] FHWA transportation project. For an FHWA transportation project, in addition to the requirements of subsections (a) -

(d) of this section, [~~paragraphs (1) - (5) of this subsection,~~] the department delegate and project sponsor must comply with any federal laws, including FHWA's rules applicable to [~~early and~~] advance acquisitions. If federal law, including FHWA's rules, conflicts with this chapter, federal law controls to the extent of the conflict.

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

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Joanne Wright
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CHAPTER 6. STATE INFRASTRUCTURE BANK

The Texas Department of Transportation (department) proposes the repeal of §6.24, Suspension of Applications, and amendments to §6.31, Department Action, and §6.32, Commission Action, all relating to the State Infrastructure Bank.

EXPLANATION OF PROPOSED AMENDMENTS AND REPEAL

The rulemaking implements new procedures for the commission's consideration of applications so that the department may more effectively manage the available funds in the State Infrastructure Bank (bank) in accordance with the policies of the Texas Transportation Commission (commission). The commission has historically used the bank to provide loans of varying size for highway projects, including relatively small loans for local government participation in department highway projects and relatively large loans for local governments' own highway projects. The commission's rules currently provide for the commission's consideration of loan applications on a first-come, first-served basis. The commission wishes to assure that funds in the bank will continue to be available for financial assistance to applicants as the need arises so it is amending the procedures for providing financial assistance from the bank.

The repeal of §6.24, Suspension of Applications, is necessary in order to adopt different notice requirements in §6.31, Department Action. Section 6.24, which requires the department to publish a notice in the *Texas Register* regarding the suspension of applications, will no longer be needed upon the adoption of the new notice requirements in §6.31(d).

Amendments to §6.31, Department Action, simplify the specified periods during which the executive director must analyze an application and prepare findings and recommendations for and submit those findings and recommendations to the commission by requiring those actions to be completed as soon as practicable. New subsection (d) requires the executive director to develop guidelines and post information on the department's website regarding available funds, limitations on the amount of bank funds available for various applicants and types of projects, application deadlines, and any other information that the executive director considers necessary for the administration of the bank in accordance with the executive director's analysis and recommendations to the commission under this chapter and the commission's direction to assure that funds in the bank will continue to be available for varying amounts of financial assistance to applicants for various types of projects as needs arise.

Amendments to §6.32, Commission Action, change the procedures regarding the commission's consideration of applications for preliminary and final approval to provide for better management of available funds in the bank. The commission wishes to assure that there will be funds available for loans of less than $10 million for local participation in a department highway project, which typically take the form of local cost participation in a department project or the relocation of utilities necessary for a department project. The commission wishes to address the potential that local governments will apply for large loans for local government projects for which the department does not have primary responsibility, which could monopolize all of the available funds in the bank and leave no funds for a loan of less than $10 million for local participation in a department highway project. The commission considers it important to have funds available in the bank for these smaller loans when a local government's participation is needed for a department project. Consequently, the proposed rule amendments streamline the commission's consideration of the smaller loans that benefit department projects, while requiring applicants for large loans and loans for local government projects to compete for available funds through a prioritization process.

Currently, §6.32(a) states that the commission will consider all relevant information, including the sufficiency of the information, the probable reliability of the projections, and the anticipated financial condition of the applicant and the project. The amendments to §6.32(a) clarify that the commission will consider all relevant information in the application together with the executive director's findings and recommendations.

Currently, §6.32(b)(1) requires that applications for financial assistance of under $10 million will be considered by the commission for final approval without going through the preliminary approval process. The amendments limit this group of applications to those for loans of under $10 million that will be used for local government participation in department projects.

Currently, §6.32(b)(2) requires that applications for financial assistance in the amount of more than $10 million must be submitted to the commission for consideration for preliminary and final approval separately. The amendments to §6.32(b)(2) require that applications for financial assistance that are not subject to §6.32(b)(1) must be submitted to the commission for preliminary and final approval separately. This category of applications will include those for loans of more than $10 million and loans of any amount for local government projects for which the department does not have primary responsibility.

Amendments to §6.32(c) add the requirements that the executive director prioritize applications that must be considered for preliminary approval and present to the commission analyses and recommendations for all complete applications received by each deadline established by the executive director in accordance with commission policies. The amendments delete the statement that the commission may consider certain factors and replace it with the requirement that the executive director must base the analyses and recommendations on specified considerations. The amendments also add factors that the executive director must consider in developing the analyses and recommendations to the commission. The amendments also clarify that the commission's preliminary approval is of an application

for financial assistance from the bank rather than to a project for bank financing. These amendments are needed to implement the new prioritization and preliminary approval process that will provide for better management of available funds in the bank.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the repeal and 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 repeal and amendments. The new procedures do not impose any additional requirements on applicants and are not expected to have any fiscal implications on state or local governments.

Benjamin H. Asher, Director, Project Finance and Debt Management Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal and amendments.

PUBLIC BENEFIT AND COST

Mr. Asher 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 repeal and amendments will be that the more effective management of the bank's funds will help ensure the availability of funds in the bank for the varied funding needs of highway projects statewide. 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 §6.24 and amendments to §6.31 and §6.32 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "SIB Rules." The deadline for receipt of comments is 5:00 p.m. on May 16, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments or repeal, or is an employee of the department.

SUBCHAPTER C. PROCEDURES

43 TAC §6.24

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D, relating to the State Infrastructure Bank.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 222, Subchapter D.

§6.24. Suspension of Applications.

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

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SUBCHAPTER D. DEPARTMENT AND COMMISSION ACTION

43 TAC §6.31, §6.32

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 §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the State Infrastructure Bank.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 222, Subchapter D.

§6.31. Department Action.

(a) Review of application. The department will review an application submitted under Subchapter C of this chapter (relating to Procedures) and advise the applicant of any required information or data that is missing. When the application is complete, the department will so notify the applicant.

(b) Analysis. The executive director will perform an analysis of the application and prepare findings and recommendations for the commission as soon as practicable in accordance with this chapter and commission policies. [~~The executive director has 30 days after the date the department determines that the application is complete to perform the analysis and prepare findings and recommendations under this subsection but, by notifying the applicant, may extend the 30-day period for up to 45 additional days if additional time is needed to analyze the application and prepare the findings and recommendations. If after the extension of the period additional time is still needed, the executive director may extend the time for analysis of the application and preparation of findings and recommendations for an additional period.~~]

(c) Submission to commission. The [~~Upon completion of the analysis, the~~] executive director will submit the application together with findings and recommendations to the commission for consideration as soon as practicable in accordance with this chapter and commission policies.

(d) Notice. The executive director shall develop guidelines and post information on the department's website regarding the amount of available funds, any limitations on the amount of funds available for various applicants or types of projects, application deadlines, and any other information that the executive director considers necessary for the administration of the bank in accordance with this chapter and the commission's direction to assure that bank funds will be available as needs arise for financial assistance to various applicants for various types of projects.

§6.32. Commission Action.

(a) Commission analysis. The commission will consider all relevant information in the application together with the executive director's findings and recommendations [~~, including the sufficiency of~~

~~the information, the probable reliability of the projections, and the anticipated financial condition of the applicant and the project~~].

(b) Consideration of applications for preliminary and final approval.

(1) Applications for financial assistance in the amount of $10 million or less will be considered by the commission for final approval without going through the preliminary approval process prescribed in subsection (c) of this section if the financial assistance is to be used for a project for which the department has primary responsibility, including for the payment of:[.]

(A) local participation in a highway improvement project under Transportation Code, Chapter 222, Subchapter C, and Chapter 15, Subchapter E of this title; or

(B) the relocation of utilities necessary for a project under Transportation Code, Chapter 203, Subchapter E, and Chapter 21, Subchapter P of this title.

(2) Applications for financial assistance that are not subject to paragraph (1) of this subsection [~~in the amount of more than $10 million~~] must be submitted to the commission for consideration for preliminary and final approval separately unless, for a particular application, the commission waives the preliminary approval requirement for that application. In determining whether to waive the preliminary approval requirement for an application, the commission will consider the complexity and size of the project, the type of infrastructure or asset involved, the type and complexity of the financial assistance requested, the financial status of the applicant, the financial feasibility of the project, and the need to expedite the financing of the project.

(3) Applications that are submitted to the commission for final approval without first being considered for preliminary approval must meet all the requirements and are subject to all the conditions applicable either to preliminary or final approval of financial assistance, except that the negotiation process under subsection (c)(3) of this section may be completed after final approval.

(c) Prioritization and preliminary [~~Preliminary~~] approval. For applications that must be considered for preliminary approval, the executive director will establish deadlines for the submittal of complete applications in accordance with commission policies. As soon as practicable after each application deadline, the executive director shall present all complete applications submitted by the deadline with the executive director's analysis of the application and the executive director's findings and recommendations, including recommendations on prioritizing the applications.

(1) Considerations. The executive director's analysis and recommendations to the commission must demonstrate the executive director's consideration of [~~Prior to granting preliminary approval of an eligible project, the commission may consider~~]:

(A) whether the project is on the state highway system;

(B) the transportation need for and anticipated public benefit of the project;

(C) the present and projected financial condition of the bank;

(D) potential social, economic, and environmental impacts and benefits of the project;

(E) conformity with the purposes of the bank;

(F) evidence of local public support; [~~and~~]

(G) rapidity of loan repayment;

(H) plan of finance;

(I) comparison of the proposed financial assistance to other funding alternatives;

(J) whether the project is on the department's 24-month letting schedule; and

(K) [~~(G)~~] any other relevant consideration.

(2) Project requirements. The commission may grant preliminary approval of an application for financial assistance from the [~~to a project for~~] bank [~~financing~~] if it finds that:

(A) the project is consistent with the Statewide Long-Range Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by an MPO;

(B) if the project is in a Clean Air Act non-attainment area, the project will be consistent with the Statewide Transportation Improvement Program, with the conforming plan and Transportation Improvement Program for the MPO in which the project is located (if necessary), and with the State Implementation Plan;

(C) the project will improve the efficiency of the state's transportation systems;

(D) the project will expand the availability of funding for transportation projects or reduce direct state costs; and

(E) the application shows that the project and the applicant are likely to have sufficient revenues to assure repayment of the financial assistance.

(3) Authorized actions. By granting preliminary approval, the commission authorizes the executive director to negotiate:

(A) the project's limits, scope, definition, design, and any other factors that may affect the financing of the project;

(B) the amount, type, and timing of disbursements of financial assistance;

(C) the interest rates, including subsidies;

(D) the fees;

(E) the charges;

(F) the repayment schedules;

(G) the term to maturity of any financial assistance;

(H) the collateral securing the financial assistance;

(I) the appropriate covenants applicable to the financial assistance;

(J) the default provisions; and

(K) all other provisions necessary to complete an agreement under Subchapter E of this chapter (relating to Financial Assistance Agreements).

(d) Social, economic, and environmental impact.

(1) Before final approval is granted under subsection (e) of this section, the department or the applicant must complete a study of the social, economic, and environmental impact of the project. The study must meet all requirements for a federal or state project as if the project had been undertaken directly by the department.

(2) For a project not on the state highway system, the applicant shall be responsible for completing required studies of social, economic, and environmental impacts, unless the applicant and the department agree otherwise. If the department agrees to be responsible

for these studies, then any costs will be charged according to the department's local participation agreement.

(3) For a project on the state highway system, the department will be responsible for completing required studies of social, economic, and environmental impacts with any costs to be charged to the project.

(e) Final approval. After preliminary approval under subsection (c) of this section, if required, the completion of negotiations under subsection (c)(3) of this section unless excepted under subsection (b)(3) of this section, and the approval of the social, economic, and environmental study required by subsection (d) of this section, the commission may grant final approval if it determines that:

(1) Providing financial assistance will protect the public's safety and prudently provide for the protection of public funds, while furthering the purposes of this chapter; and

(2) The project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

(f) Postponement. The commission may postpone final approval if it finds that the current or projected financial condition of the bank warrants this action.

(g) Contingencies. The commission may make its preliminary or final approval contingent on further actions by the applicant, including making changes in the application, levying taxes, and maintaining specified conditions necessary to assure repayment.

(h) Order of approval or disapproval. Approval or disapproval of financial assistance, whether preliminary or final, will be by written order of the commission and will include the rationale, findings, and conclusions on which approval or disapproval is based. Approval or disapproval will be in the sole discretion of the commission, and nothing in this subchapter is intended to require approval of any financial assistance.

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

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CHAPTER 7. RAIL FACILITIES
SUBCHAPTER D. RAIL SAFETY

43 TAC §§7.31, 7.33, 7.34, 7.36

The Texas Department of Transportation (department) proposes amendments to §7.31, Safety Requirements, §7.33, Reports of Accidents/Incidents, §7.34, Hazardous Materials--Telephonic Reports of Incidents, and §7.36, Clearances of Structures Over and Alongside Railway Tracks, concerning Rail Safety.

EXPLANATION OF PROPOSED AMENDMENTS

The rule amendments correct statutory references, update the toll-free number for railroads to use when reporting on rail safety incidents, and clarify the application and approval process for waivers of railway clearance provisions.

Amendments to §7.31, Safety Requirements, add references to Transportation Code, Chapters 191 and 192 to the list of laws containing safety requirements with which railroads operating in the state must comply. Both chapters provide requirements for railroad companies that are reviewed and monitored by the department.

Amendments to §7.33, Reports of Accidents/Incidents, and §7.34, Hazardous Materials--Telephonic Reports of Incidents, update the toll-free number listed for railroads to use when reporting on rail safety accidents and incidents. The changes replace the toll-free number of a customer service vendor with the number monitored by the department.

Amendments to §7.36, Clearances of Structures Over and Alongside Railway Tracks, update statutory references within the section and clarify the application and approval process for waivers to requirements related to the clearances of structures over and beside railway tracks. The amendments clarify that the commission decides whether to grant a waiver. Vernon's Texas Civil Statutes, Article 6559f, which was originally passed by the legislature in 1925, authorized the Railroad Commission, under certain conditions, by order to grant a deviation from the requirements of Articles 6559a - 6559c. In 2005, the legislature transferred all powers and duties of the Railroad Commission that related primarily to railroads and the regulation of railroads to the state transportation agency. The wording of Article 6559f remained unchanged until it was codified as Transportation Code, §191.005, as a part of the legislature's codification of Texas statutes. Section 191.005 authorizes the department by order to grant a deviation (or waiver). Notwithstanding the legislature's generic use of "department" on the transfer of the Railroad Commission's duties, the authority and duties of the Railroad Commission, itself, were transferred to the Transportation Commission and the authority and duties of the staff of Railroad Commission were transferred to the department. Accordingly, the authority to grant a waiver from the requirements of Articles 6559a - 6559c rests with the commission and a waiver may be granted only by commission minute order.

The amendments to §7.36 also remove the reference to 43 TAC §7.42 regarding administrative review because the decision on a waiver is made by the commission and not the executive director but expressly retain, as new subsections (e)(3) and (4), the parts of §7.42(c) providing that insufficient information will result in denial of the waiver and that there is no right of appeal.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each 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.

Ms. Carol T. Rawson, P.E., Director, Traffic Operations 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

Ms. Rawson 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 more accurate references to governing statutes,

updated rail safety contact information, and clarified application and approval procedure to obtain waivers of provisions to railway clearance requirements. 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 §§7.31, 7.33, 7.34, and 7.36 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to *RuleComments@txdot.gov* with the subject line "Rail Safety Rules." The deadline for receipt of comments is 5:00 p.m. on May 16, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

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

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 111, 191, 192, and 193.

§7.31. Safety Requirements.

(a) Applicability. A person, association, private corporation, public corporation, or any other entity that owns or operates a railroad shall comply with the requirements of this subchapter.

(b) Governing statutes. Railroads operating within the state of Texas shall comply with the safety requirements contained in or adopted under:

(1) 49 United States Code, Subtitle III, Chapter 51;

(2) 49 United States Code, Subtitle V, Part A;

(3) Transportation Code, Chapter 111;

(4) Transportation Code, Chapters 191, 192, and 193 [~~Chapter 193~~];

(5) 49 C.F.R. Part 40;

(6) 49 C.F.R. Parts 107 and 171 - 180; and

(7) 49 C.F.R. Subtitle B, Chapter II, Federal Railroad Administration, Department of Transportation, Parts 200 - 299.

§7.33. Reports of Accidents/Incidents.

(a) Telephonic reports of certain accidents/incidents.

(1) A railroad shall give immediate telephonic notice to the department of accidents/incidents and other events by calling the department's Traffic Operations Division at (844) 292-0980 [~~(800) 440-0376~~]. Except as provided in paragraph (2) of this subsection, a railroad shall give reports to the department in the same manner and following the same requirements as the railroad shall give reports to the National Response Center under 49 C.F.R. §225.9.

(2) In addition to giving the department telephonic notice of the accidents/incidents and other events described in 49 C.F.R. §225.9, a railroad shall give telephonic notice of accidents/incidents which:

(A) result in the death of one or more persons;

(B) result in the injury of two or more persons;

(C) involve a fire or explosion; or

(D) involve a passenger or commuter train.

(b) Written reports. When the department makes a written request, a railroad shall furnish the department with a copy of an accident/incident report filed with the FRA under 49 C.F.R. Part 225, within 30 days after expiration of the month during which the accident/incident occurred. Only copies of reports that concern accidents/incidents occurring in the state of Texas shall be filed with the department. It is preferred that filings required by this section be made by electronic digital media format.

§7.34. Hazardous Materials--Telephonic Reports of Incidents.

A railroad shall give immediate telephonic notice to the department of hazardous materials incidents by calling the department's Traffic Operations Division at (844) 292-0980 [~~(800) 440-0376~~]. A railroad shall give reports to the department in the same manner and following the same requirements as the railroad shall give reports to the National Response Center under 49 C.F.R. §171.15. A railroad shall give telephonic notice of only those accidents/incidents which involve the operation of railroad on-track equipment (standing or moving).

§7.36. Clearances of Structures Over and Alongside Railway Tracks.

(a) The lowest part of a structure built over the tracks of a railroad, including a bridge, viaduct, foot bridge, or power line, may not be less than 22 feet above the top of the rails of the tracks.

(b) A structure, including a platform or fence, or material may not be built or placed so that any part of the structure or material is less than 8-1/2 feet from the center line of a railroad track, including a main line, spur, switch, or siding.

(c) The lowest part of a roof projection constructed for any purpose may not be less than 22 feet above the top of the rails of a railroad track and the horizontal edge of the roof projection may not be less than 8-1/2 feet from the center line of the track.

(d) Transportation Code, §191.001 and §191.002 and the requirements of this section do [~~The provisions of the Texas Clearance Law, Texas Civil Statutes, Articles 6559a-6559f, shall~~] not apply to engine houses or buildings into which locomotives or cars are moved for terminal inspection, attention, or repairs.

(e) Waiver of Provision [~~Variance~~].

(1) An individual or entity [~~A railroad~~] may apply for a waiver [~~variance~~] from the requirements of Transportation Code, §191.001 and §191.002 [~~the Texas Clearance Law, Texas Civil Statutes, Articles 6559a-6559f~~], or this section, on a form to be prescribed by the department and provided on the department web site.

(2) The department shall process the application and submit it to the commission for final action [~~in accordance with §7.42 of this subchapter (relating to Administrative Review). The department may approve an application, provided there remains adequate protection for the safety of people and equipment~~]. The commission shall grant, grant in part, or deny the waiver request. The commission [~~department~~] may require appropriate measures such as posting warning signs and giving notice to railroads that use the facility.

(3) If the applicant does not provide sufficient information to evaluate the waiver request, the commission will deny the request.

(4) The applicant is not entitled to a contested case hearing, and there is no right to appeal the commission decision.

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

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §§9.31, 9.32, 9.34, 9.35, 9.37, 9.41

The Texas Department of Transportation (department) proposes amendments to §9.31, Definitions, §9.32, Selection Processes, Contract Types, Selection Types, and Projected Contracts, §9.34, Comprehensive Process, §9.35, Federal Process, §9.37, Accelerated Process, and §9.41, Contract Administration, concerning Contracting for Architectural, Engineering, and Surveying Services.

EXPLANATION OF PROPOSED AMENDMENTS

Effective June 22, 2015, the Federal Highway Administration revised 23 CRF 172, relating to procurement, management, and administration of engineering, architectural, and surveying contracts. States were given 12 months to make corresponding revisions to their policies and procedures. The changes to the rules incorporate the updates required by federal regulations and correct citations and terminology.

Amendments to §9.31 include new definitions for "department project manager," "indefinite deliverable contract," "multiphase contract," "prime provider project manager," "Professional Engineering Procurement Services Division," "Professional Engineering Procurement Services Division Director," "proposal," "request for proposal," and "specific deliverable contract." The amendments also include revisions to the terms "consultant selection team," "non-listed category," and "relative importance factor." These new and revised definitions are necessary to provide clarity. The terms "managing office," "managing officer," and "notice of intent" are no longer used and are proposed to be deleted.

Amendments to §9.32(b) add multiphase contract as a third contract type offered by the department and provide the maximum period of five years for an indefinite deliverable contract. Federal regulations provide the five-year maximum for federally funded contracts. The amendments apply this contract period to all indefinite deliverable contracts, whether federally or state-funded, for consistency among those contracts.

Amendments to §§9.34, 9.35, 9.37, and 9.41 update references to reflect the current names of departmental positions and entities.

Additionally, §9.35 is amended by adding subsection (d) that modifies the short list evaluation for the federal process by adding the evaluation of proposals in addition to interview for the federal process, as directed by federal regulations.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each 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.

Mr. Martin L. Rodin, P.E., Director, Professional Procurement Services 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. Rodin 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 improvements to the department's provider selection processes. 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 §§9.31, 9.32, 9.34, 9.35, 9.37, and 9.41 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "PEPS Rules." The deadline for receipt of comments is 5:00 p.m. on May 16, 2016. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.31. Definitions.

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

(1) Consultant Certification Information System (CCIS)--A computer system used to collect and store information related to the department's certification of providers.

(2) Consultant selection team (CST)--The department's team that evaluates statements of qualification, proposals, and interviews and selects the provider based on demonstrated qualifications.

(3) Department--The Texas Department of Transportation.

(4) Department project manager--A department employee who manages a project from project initiation and contracting through project close-out, including the oversight and management of deliverables and provider performance.

(5) [~~(4)~~] Executive director--The executive director of the department.

(6) Indefinite deliverable contract--A contract containing a general scope of services that identifies the types of work that will later be issued under work authorizations, but does not identify deliverables, locations, or timing in sufficient detail to define the provider's responsibilities under the contract.

(7) [~~(5)~~] Interview and Contract Guide (ICG)--A document provided by the department to short-listed providers that includes instructions to prepare for the interview.

(8) Multiphase contract--A project specific contract where the solicited services are divided into phases whereby the specific scope of work and associated costs may be negotiated and authorized by phase as the project progresses.

~~[(6) Managing office--The department's organizational sub-unit responsible for overseeing the provider selection, leading the contract negotiations, administering the contract, and processing invoices.]~~

~~[(7) Managing officer--The head of a managing office.]~~

(9) [~~(8)~~] Non-listed category (NLC)--A formal classification[~~, developed by a managing office,~~] used to define a specific subdiscipline of work and provide the minimum technical qualifications for performing the work. NLCs address project-specific work categories not covered by the standard work categories.

~~[(9) Notice of intent (NOI)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract and provides instructions for preparation and submittal of a statement of qualification generally referred to as a solicitation.]~~

(10) Precertification--A department process conducted to verify that a provider meets the minimum technical requirements to perform work under a standard work category.

(11) Prime provider--A firm that provides or proposes to provide architectural, engineering, or surveying services under contract with the state.

(12) Prime provider project manager--An employee of a prime provider who serves as the point of contact for the provider to coordinate project deliverables and project performance with the department.

(13) Professional Engineering Procurement Services (PEPS) Division--The department's division responsible for overseeing procurement planning, provider selection, leading the contract negotiations, administering the contract, and processing invoices.

(14) Professional Engineering Procurement Services (PEPS) Division Director--The head of the PEPS Division.

(15) Proposal--A response to a request for proposal that provides details on a provider's specific technical approach and qualifications.

(16) [~~(12)~~] Provider--A prime provider or subprovider.

(17) [~~(13)~~] Relative importance factor (RIF)--The numerical weight assigned to an evaluation criterion, used by the consultant selection team to score statements of qualification, proposals, and interviews.

(18) Request for proposal (RFP)--A document provided by the department to short-listed providers that provides instructions for submitting a proposal and may include instructions to prepare for the interview.

(19) [~~(14)~~] Request for qualification (RFQ)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract and provides instructions for the preparation and submittal of a statement of qualification generally referred to as a solicitation.

(20) [~~(15)~~] Short list--The list of prime providers most qualified to perform the services specified in an RFQ, as demonstrated by the statement of qualification scores.

(21) [~~(16)~~] Solicitation--A request for qualification.

(22) Specific deliverable contract--A contract containing a specific scope of services that identifies deliverables, locations, and timing in sufficient detail to define the provider's responsibilities under the contract, although additional requirements may later be specified in work authorizations.

(23) [~~(17)~~] Standard work category--A formal classification, developed by the department, used to define a specific sub-group of work and provide the minimum technical qualifications for performing the work.

(24) [~~(18)~~] Statement of qualification (SOQ)--A document prepared by a prime provider, submitted in response to a request for qualification.

(25) [~~(19)~~] Subprovider--A firm that provides or supports, or proposes to provide or support, architectural, engineering, or surveying services under contract with a prime provider.

§9.32. Selection Processes, Contract Types, Selection Types, and Projected Contracts.

(a) Selection processes. The department will issue solicitations and select providers under the following selection processes: comprehensive, federal, streamlined, accelerated, emergency, and urgent and critical.

(b) Contract types. The department will offer three [~~two~~] types of contracts: indefinite deliverable, [~~and~~] specific deliverable, and multiphase.

(1) An indefinite deliverable contract may be used for a single project or for multiple projects. The solicitation will describe the typical work types to be performed under the contract.

(A) Categorical limitations on contract dollar value may be established by the executive director or the executive director's designee.

(B) The contract period in which initial work authorizations may be issued may not be longer than two years after the date of contract execution, unless approved by the Texas Transportation Commission before the solicitation posting date.

(C) Supplemental agreements may be issued to extend the contract period beyond two years, but only as necessary to complete work on an initial work authorization. The contract period may not extend more than five years beyond the execution date.

(2) A specific deliverable contract may be used for a single project or for multiple projects. The solicitation will specify the specific deliverables to be provided under the contract.

(3) A multiphase contract may be used for a single project or for multiple projects. The solicitation will describe the services to be provided under the contract and will divide the services into phases. The specific scope of work may be established and the associated costs negotiated and authorized by phase as the project progresses.

(c) Selection types.

(1) Single contract selection. One contract will result from the solicitation.

(2) Multiple contract selection. More than one contract of similar work types will result from the solicitation. The solicitation will indicate the number and type of contracts.

(d) Projected contracts list. Quarterly, the department will publish on the department's website a list of projected contracts for architectural, engineering, and surveying services.

§9.34. Comprehensive Process.

(a) Applicability. The comprehensive process described under this section must be used for any specific deliverable contract that is $1 million or more in value and is not subject to §9.35 of this subchapter (relating to Federal Process).

(b) Administrative qualification.

(1) Administrative qualification is a process used by the department to verify that a provider has an indirect cost rate that meets department requirements. Except as provided by paragraph (8) of this subsection, to compete for a contract under this section a provider either must be administratively qualified or must accept an indirect cost rate under paragraph (7) of this subsection.

(2) Factors in determining administrative qualification.

(A) A provider may demonstrate administrative qualification by an audit or by self-certification.

(i) An audit may be performed by an independent certified public accountant (CPA), an agency of the federal government, another state transportation agency, or a local transit agency. An audit performed by an independent CPA must be conducted in accordance with the current versions of 48 C.F.R. Part 31, the Generally Accepted Government Auditing Standards (GAGAS), and the American Association of State Highway Transportation Officials (AASHTO) Uniform Audit and Accounting Guide. The provider must provide the department with unrestricted access to the audit work papers, records, and other information as requested by the department.

(ii) Self-certification may be conducted by the provider and must include a cost report and an internal controls report. The self-certified cost report must comply with the current versions of 48 C.F.R. Part 31, the GAGAS, and the AASHTO Uniform Audit and Accounting Guide. The self-certified internal control report must certify the provider has internal controls in place within its organization. Both the cost report and the internal control report must be signed by a company officer and notarized.

(B) The audit or self-certification shall be based on the provider's fiscal year. The indirect cost rate, as approved by the department, shall become effective six months after the end of the provider's fiscal year, or immediately if filed more than six months after the end of the provider's fiscal year. It shall be effective no more than twelve months and shall expire eighteen months after the end of the fiscal year upon which it is based.

(C) A provider must submit on an annual basis a compensation analysis for all executives in accordance with the AASHTO Uniform Audit and Accounting Guide.

(D) The department may audit the indirect cost rate of a provider under contract with, or seeking to do business with, the department. These audits will be conducted in accordance with the criteria outlined in this subsection.

(E) A provider must submit a signed Certification of Final Indirect Costs with the audit report or self-certification. The certification must follow the requirements of the Federal Highway Administration.

(3) Submittal and review process for administrative qualification.

(A) A provider must submit its administrative qualification information to the department in accordance with the instructions on the department's website.

(B) Upon review of an audit report or self-certification received from a provider, the department may request additional information from the provider. If the submittal is not complete and accurate, the department will return it to the provider for correction. Upon request for additional information by the department, the provider shall submit the information within 15 days after the day that it receives the department's request. If the information is not provided within the 15-day period, the submittal will be placed on pending status for an additional 15 days. If the information is not received within the additional 15-day period, the submittal will not be processed for administrative qualification.

(4) Administrative qualification is applicable only to the incorporated business entity upon which the indirect cost rate is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity, except as provided by this paragraph. A corporation may administratively qualify a business segment of the corporation if the business segment is not limited to a geographical area that is less than the entire state of Texas and if the corporation is able to demonstrate and justify the allocation of costs between the business segment and other corporate operations. If a corporate business segment is administratively qualified, the resulting indirect cost rate is not applicable to staff not employed by the business segment.

(5) The department will use [~~provide~~] a selected firm's indirect cost rate information [~~to the managing office for use~~] in negotiations under §9.40 of this subchapter (relating to Negotiations).

(6) The department will not provide a firm's administrative qualification information to the department's staff conducting negotiations [~~managing office~~] or the consultant selection team before the selection of that firm.

(7) Providers not administratively qualified. The department may contract with a prime provider or allow the use of a subprovider that is not administratively qualified if:

(A) the provider has been in operation, as currently organized, for less than one fiscal year and the provider accepts an indirect cost rate developed by the department; or

(B) on request by the department during the selection process, the prime provider provides written certification that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the department.

(8) Exemptions to administrative qualification.

(A) A non-engineering firm is exempt from the administrative qualification requirement of this section.

(B) A provider performing a service under standard work category 18.2.1, subsurface utilities engineering, or any of the

following work groups, as listed on the department's precertification website, is exempted from administrative qualification, to the extent of the service being performed:

(i) Group 6, bridge inspection;

(ii) Group 12, materials inspection and testing;

(iii) Group 14, geotechnical services;

(iv) Group 15, surveying and mapping; and

(v) Group 16, architecture.

(C) The department may exempt services other than those indicated in subparagraph (B) of this paragraph on a case-by-case basis. Any request for an exemption must be received by the department by the closing date of the solicitation.

(c) Consultant selection team (CST).

(1) The department shall use a CST in selecting providers under this section.

(2) The CST shall be composed of at least three department employees.

(3) At least one CST member must be a professional engineer, for engineering contracts; a registered architect, for architectural contracts; and either a professional engineer or registered professional land surveyor, for surveying contracts.

(4) If a CST member leaves the CST during the selection process, the process may continue with the remaining members, subject to paragraph (3) of this subsection.

(d) Request for qualifications (RFQ). Not fewer than 14 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an RFQ providing the contract information and specifying the requirements for preparing and submitting a statement of qualification.

(e) Statement of qualification (SOQ). To be considered, an SOQ must comply with the requirements specified in the RFQ.

(f) Replacements. An individual may be proposed as a replacement for the prime provider project manager or a task leader prior to the department's notification of firms short-listed for an interview. A proposed replacement must be designated in the SOQ and must satisfy the applicable precertification and non-listed category requirements.

(g) SOQ screening and evaluation.

(1) The department may disqualify an SOQ if the department has knowledge that a firm on the project team or an employee of a firm on the project team is the subject of a final administrative or judicial determination that the firm or employee has violated a statute or rule of a state licensing entity related to occupational or professional conduct.

(2) If an SOQ is not disqualified under paragraph (1) of this subsection, the CST will screen the SOQ to determine whether it complies with the requirements specified in the RFQ. Each SOQ that meets these requirements will be considered responsive to the RFQ and evaluated.

(3) The CST will evaluate the responsive SOQ according to the evaluation criteria detailed in the RFQ based on factors the department has identified as most likely to result in the selection of the most qualified provider.

(h) Short list. The short list will consist of the most qualified providers, as indicated by the SOQ scores.

(1) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted a responsive SOQ.

(2) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer than the desired number of prime providers submitted a responsive SOQ.

(3) Notification.

(A) The department will notify each prime provider that submitted an SOQ whether it was short-listed.

(B) The department will notify each short-listed prime provider whether a short list meeting will be held.

(i) Short list evaluation.

(1) Interviews. The department will evaluate the short-listed providers through interviews. The department will issue an Interview and Contract Guide (ICG) to each short-listed prime provider. The ICG will provide contract information and specify the requirements for the interview.

(2) Short list evaluation criteria. The CST will evaluate the interviews according to the criteria specified in the ICG, including the prime provider's past performance scores in the Consultant Certification Information System database reflecting less than satisfactory performance.

(j) Selection.

(1) Basis of final selection. The CST will select the best qualified provider, as indicated by the short list scores.

(2) Tie scores. The PEPS Division Director [~~managing officer~~] will break a tie using the following method.

(A) The first tie breaker will be the scores for the interview criterion with the highest RIF.

(B) The remaining interview criteria shall be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the interview criteria, the provider will be chosen by random selection.

(3) Notification. The department will:

(A) provide written notification to the prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each short-listed prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the short list and the selected provider on a web-based bulletin board.

(4) Appeal. A provider may file a written appeal concerning the selection process with the executive director or the executive director's designee as provided under §9.7 of this chapter (relating to Protest of Contract Practices or Procedures).

§9.35. Federal Process.

(a) This section applies to an engineering or design related service contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding.

(b) A firm providing engineering and design related services must be administratively qualified under §9.34(b)(2) - (6) of this subchapter (relating to Comprehensive [~~Standard~~] Process), or use an indi-

rect cost rate applicable under Federal Highway Administration regulations or guidelines, by the closing date of the RFQ [~~NOI~~] to compete for contracts under this section. Paragraphs (7) and (8) of §9.34(b) of this subchapter do not apply to a contract under this section.

(c) Except as provided in subsection (b) of this section and in §9.34(i) of this subchapter, the process described in §9.34 of this subchapter applies to contracts under this section.

(d) Short list evaluation.

(1) Request for proposals and interviews. The department will issue an RFP to the short listed providers. The RFP will provide contract information and specify the requirements for the proposal and interview.

(2) Short-list evaluation criteria. The CST will evaluate proposals and interviews according to the criteria specified in the RFP, including the prime provider's past performance scores in the Consultant Certification Information System database reflecting less than satisfactory performance.

§9.37. Accelerated Process.

(a) Applicability. The accelerated process described in this section may be used for contracts that are not subject to §§9.34, 9.35, or 9.36 of this subchapter (relating to Comprehensive Process, Federal Process, or Streamlined Process, respectively).

(b) Administrative qualification. Section 9.34(b) of this subchapter applies to contracts under this section.

(c) Selection process. Section 9.34(c) - (e) and (g) of this subchapter are applicable for this process.

(d) Selection.

(1) Basis of final selection. The consultant selection team will select the best qualified provider, as indicated by the SOQ scores, which will include evaluation of the prime provider's past performance scores in the Consultant Certification Information System database reflecting less than satisfactory performance.

(2) Tie scores. The PEPS Division Director [~~managing officer~~] will break a tie using the following method.

(A) The first tie breaker is the scores for the selection criterion with the highest relative importance factor (RIF).

(B) The remaining selection criteria will be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the selection criteria, the provider will be chosen by random selection.

(3) Notification. The department will:

(A) provide written notification to a prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the selected provider on a web-based bulletin board.

(4) Appeal. Section 9.34(j)(4) of this subchapter applies to this section.

§9.41. Contract Administration.

(a) Prime provider's percentage of work. A prime provider shall perform at least 30 percent of the contracted work with its own work force, unless otherwise approved by the department.

(b) Project manager replacement. The prime provider project manager may not be replaced without the prior written consent of the department.

(c) Department audits. The department may perform interim and final audits.

(d) Performance evaluations.

(1) The department project manager [~~managing office~~] will document the prime provider's performance on the contract by evaluating the project manager and the firm. Evaluations will be conducted during the ongoing contract activity and at the completion of the contract.

(2) Further evaluations pertaining to project constructability may be conducted during project construction and at the completion of the construction contract.

(3) The department will give a copy of each completed performance evaluation to the prime provider for review and comment. The prime provider's comments will be entered into the Consultant Certification Information System (CCIS).

(4) Performance evaluation scores will be entered into the CCIS and may be used for the purpose of provider selection.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601534
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: May 15, 2016
For further information, please call: (512) 463-8630

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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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.614

The Texas Department of Housing and Community Affairs withdraws the proposed repeal of §10.614, which appeared in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26).

At the Board meeting of December 17, 2015, staff proposed a repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances and concurrently proposed a new §10.614. The intent was to codify federal requirements related to utility allowance under the HOME Final Rule, 24 CFR Part 92, which was updated in August 2013. The rule introduced a new requirement for the Department, as the Participating Jurisdiction, to determine a development's utility allowance using the HUD Utility Model Schedule. Further, the Department identified a need for more detail in the rule to provide better guidance on how to properly calculate a utility allowance for all Department administered multifamily programs.

The repeal and proposed new section were published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26). A public comment period was held January 1, 2016, through February 1, 2016. Significant comment was received indicating that the Department had not clearly outlined the expectation and/or rationale to support the rule. At the Board meeting of February 25, 2016, comment was made during the public comment period of the meeting by Jen Joyce Brewerton, representing the Texas Affiliation of Affordable Housing Providers ("TAAHP"), requesting staff to sit down with the development community and TAAHP membership to discuss the Department tentative reasoned response to public comment received for the purposes of education. The Department held a "Compliance Discussion" on March 9, 2016, that was open to the public. To date, the Department has held public meetings to discuss matters related to utility allowances November 13, 2015, January 29, 2016, and March 9, 2016.

On March 3, 2016, Treasury released the final Treasury Regulation §1.42-10, which governs federal utility allowance requirements under Section 42. The changes in the updated regulation requires additional changes to §10.614 (concerning Utility Allowance) that were not included in the previously proposed rule.

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601561
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 4, 2016
For further information, please call: (512) 475-2330

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10 TAC §10.614

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Filed with the Office of the Secretary of State on April 4, 2016.

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TRD-201601562
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: April 4, 2016
For further information, please call: (512) 475-2330

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 116. PROPERTY MANAGEMENT DIVISION

SUBCHAPTER A. STATE OWNED PROPERTY

1 TAC §116.3

Introduction and Background

The Texas Facilities Commission (the "Commission") adopts an amendment to Chapter 116, §116.3, without changes to the proposed text as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8849). During its rule review, published in the October 2, 2015, issue of the *Texas Register* (40 TexReg 6941), the Commission reviewed and considered Texas Administrative Code, Title 1, Part 5, Chapter 116 for readoption, revision, or repeal in accordance with Texas Government Code §2001.039 (West 2008). The Commission considered, among other things, whether the agency rulemaking authority and business necessity associated with the adoption of the rules continued to exist. No comments were received during the proposed rule review. The Commission determined that the chapter should be readopted with amendments. Accordingly, the Commission proposed an amendment to §116.3. Notice of the proposed amendment was published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8849).

Justification for the Rule

Section 116.3 sets out the procedure for submitting maintenance, repair, and modification service requests. Subsection (a) specifically sets out the procedure for submitting maintenance service requests. In order to reflect current agency processes and procedures, the Commission adopts an amendment to this subsection. The amendment deletes the word "facsimile." The Commission no longer accepts maintenance service requests by facsimile. The adopted amendment is necessary to reflect the current process and procedures of the agency.

The Commission received no comments concerning the proposed amendment.

Statutory Authority

The rule amendment is adopted under Texas Government Code §2165.0012, which authorizes the Commission to adopt rules to administer Chapter 2165.

Cross Reference to Statute

The statutory provisions affected by the amendment are those set forth in Chapter 2165 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on March 29, 2016.

TRD-201601457
Kay Molina
General Counsel
Texas Facilities Commission
Effective date: April 18, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 475-2400

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 33. ADVANCED TELECOMMUNICATIONS SERVICES

1 TAC §354.1432

The Texas Health and Human Services Commission (HHSC) adopts amendments to §354.1432, concerning Telemedicine and Telehealth Benefits and Limitations, with changes to the proposed text as published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 559). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The rule amendment is a result of House Bill (H.B.) 1878, 84th Legislature, Regular Session, 2015, which clarifies that physicians shall be reimbursed for telemedicine medical services provided in a school-based setting, even if the physician is not the patient's primary care physician, if certain conditions are met. The rule amendment updates the Medicaid rule for telemedicine services to reflect the additional requirements outlined in the bill.

COMMENTS

The 30-day comment period ended on February 14, 2016. During the 30-day comment period, HHSC received written comments from Children's Hospital Association of Texas, Children's Health, Texas Nurses Association, Texas Medical Association, and Texas Hospital Association.

Summaries of each comment and HHSC's responses follow:

Comment: Three commenters noted that proposed §354.1432(1)(G)(iv) should refer to the definition of health professional provided in Texas Government Code §531.0217(a)(1). The proposed rule text of §354.1432(1)(G)(iv) referred instead to Texas Government Code §531.0271(a)(1).

Response: HHSC has corrected the citation in §354.1432(1)(G)(iv) from Texas Government Code §531.0271(a)(1) to Texas Government Code §531.0217(a)(1) and changed "health care professional" to "health professional."

Comment: One commenter noted that the language of H.B. 1878 refers to "health professional," rather than to "health care professional," as is reflected in the proposed amendments to §354.1432, and requests that HHSC modify the term as used in §354.1432(G)(iv) to align with both H.B. 1878 and Texas Government Code §531.0217(a)(1).

Response: HHSC has corrected §354.1432(G)(iv) to include the term "health professional," rather than "health care professional."

Comment: Two commenters requested that HHSC clarify how far in advance and at what frequency parent or legal guardian consent for a telemedicine medical service must be obtained.

Response: HHSC considers medical and behavioral health services delivered via advanced telecommunications technology interchangeable with the same medical or behavioral health services delivered in-person. HHSC expects that all consent to treatment requirements applicable to medical or behavioral health services delivered in-person are observed for medical and behavioral health services delivered via advanced telecommunications technology. HHSC lacks the statutory authority to offer guidance on federal and state consent to treatment requirements.

Comment: Two commenters requested that HHSC clarify that the language "as applicable" in §354.1432(1)(E) allows parents to choose not to share any treatment summaries with their child's primary care provider.

Response: HHSC agrees that a parent can opt out of sharing treatment summaries for a telemedicine visit with their child's primary care physician, and this is addressed in §354.1432(1)(E)(i). However, as noted in the Preamble to the proposed rules, treatment notifications are also not required to be provided to a primary care physician if the child receiving treatment does not have a designated primary care physician, and it is this situation to which "as applicable" refers. HHSC will replace "as applicable" with "unless the patient does not have a primary care physician or provider" in §354.1432(1)(E) to make the rule clearer.

Comment: Two commenters suggested that HHSC replace "must receive" with "must be offered" in §354.1432(1)(F), in recognition that some parents may refuse to accept the treatment summary or list of possible primary care physicians.

Response: HHSC accepts the comment and will replace "must receive" with "must be offered" in §354.1432(1)(F).

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1432. Telemedicine and Telehealth Benefits and Limitations.

Telemedicine medical services and telehealth services are a benefit under the Texas Medicaid program as provided in this section and are subject to the specifications, conditions, limitations, and requirements established by the Texas Health and Human Services Commission or its designee (HHSC).

(1) Conditions for reimbursement applicable to telemedicine medical services.

(A) The telemedicine medical services must be designated for reimbursement by HHSC. Telemedicine medical services designated for reimbursement include:

(i) consultations;

(ii) office or other outpatient visits;

(iii) psychiatric diagnostic interviews;

(iv) pharmacologic management;

(v) psychotherapy; and

(vi) data transmission.

(B) The services must be provided in compliance with 22 TAC Chapter 174 (relating to Telemedicine).

(C) The patient site must be:

(i) an established medical site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) For a child receiving telemedicine medical services in a primary or secondary school-based setting, advance parent or legal guardian consent for a telemedicine medical service must be obtained.

(E) The patient's primary care physician or provider must be notified of a telemedicine medical service, unless the patient does not have a primary care physician or provider.

(i) The patient receiving the telemedicine medical service, or the patient's parent or legal guardian, must consent to the notification.

(ii) For a telemedicine medical service provided to a child in a primary or secondary school-based setting, the notification must include a summary of the service, including:

(I) exam findings;

(II) prescribed or administered medications; and

(III) patient instructions.

(F) If a child receiving a telemedicine medical service in a primary or secondary school-based setting does not have a primary care physician or provider, the child's parent or legal guardian must be offered:

(i) the information in subparagraph (E)(ii) of this paragraph; and

(ii) a list of primary care physicians or providers from which to select the child's primary care physician or provider.

(G) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician or provider, are reimbursed if:

(i) the physician is enrolled as a Medicaid provider;

(ii) the patient is a child who receives the service in a primary or secondary school-based setting;

(iii) the parent or legal guardian of the patient provides consent before the service is provided; and

(iv) a health professional as defined by Texas Government Code §531.0217(a)(1) is present with the patient during the treatment.

(2) Conditions for reimbursement applicable to telehealth services.

(A) The telehealth services must be designated for reimbursement by HHSC. Designated telehealth services will be listed in the Texas Medicaid Provider Procedures Manual.

(B) The services must be provided in compliance with standards established by the respective licensing or certifying board of the professional providing the services.

(C) The patient site must be:

(i) an established health site;

(ii) a state mental health facility; or

(iii) a state supported living center.

(D) The patient site presenter must be readily available for telehealth services. However, if the telehealth services relate only to mental health, a patient site presenter does not have to be readily available except when the patient may be a danger to himself or to others.

(E) Before receiving a telehealth service, the patient must receive an in-person evaluation for the same diagnosis or condition, with the exception of a mental health diagnosis or condition. For a mental health diagnosis or condition, the patient may receive a telehealth service without an in-person evaluation provided the purpose of the initial telehealth appointment is to screen and refer the patient for additional services and the referral is documented in the medical record.

(F) For the continued receipt of a telehealth service, the patient must receive an in-person evaluation at least once during the previous 12 months by a person qualified to determine a need for services.

(G) Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(H) Written telehealth policies and procedures must be maintained and evaluated at least annually by both the distant site provider and the patient site presenter and must address:

(i) patient privacy to assure confidentiality and integrity of patient telehealth services;

(ii) archival and retrieval of patient service records; and

(iii) quality oversight mechanisms.

(3) Conditions for reimbursement applicable to both telemedicine medical services and telehealth services.

(A) Preventive health visits under Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment program, are not reimbursed if performed using telemedicine medical services or telehealth services. Health care or treatment provided using telemedicine medical services or telehealth services after a THSteps preventive health visit for conditions identified during a THSteps preventive health visit may be reimbursed.

(B) Documentation in the patient's medical record for a telemedicine medical service or a telehealth service must be the same as for a comparable in-person evaluation.

(C) Providers of telemedicine medical services and telehealth services must maintain confidentiality of protected health information (PHI) as required by 42 CFR Part 2, 45 CFR Parts 160 and 164, chapters 111 and 159 of the Occupations Code, and other applicable federal and state law.

(D) Providers of telemedicine medical services and telehealth services must comply with the requirements for authorized disclosure of PHI relating to patients in state mental health facilities and residents in state supported living centers, which are included in, but not limited to, 42 CFR Part 2, 45 CFR Parts 160 and 164, Health and Safety Code §611.004, and other applicable federal and state law.

(E) Telemedicine medical services and telehealth services are reimbursed in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601569
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 15, 2016
Proposal publication date: January 15, 2016
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.610

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, §10.610, concerning Tenant Selection Criteria, without changes to the proposal as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26). The rule is repealed in connection with the adoption of new §10.610, concerning Written Policies and Procedures, which was proposed concurrently in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26).

REASONED JUSTIFICATION. The repeal of §10.610 concerning Tenant Selection Criteria will allow for the concurrent adoption of new §10.610 concerning Written Policies and Procedures.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601566
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: January 1, 2016
For further information, please call: (512) 475-2330

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10 TAC §10.610

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, §10.610, concerning Written Policies and Procedures, with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 26). This new section is being adopted concurrently with the repeal of existing §10.610, concerning Tenant Selection Criteria. Changes were made to the proposed text in response to public comment.

REASONED JUSTIFICATION. The purpose the new rule is to provide guidance and clarification related to required policies and procedures, through a restructuring of the rule, to effectuate compliance with federal civil rights laws.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. Comments were received from (1) Abby Allen, (2) Lori Erbst, (3) Luann Kolander, (4) Lucy Defendini, and (5) Patricia Hensley.

COMMENT SUMMARY: §10.610(b)(3) relating to households participating in a federal, state or local government rental assistance programs--Commenter (1) observes that the minimum income standard of 2.5 times the tenant portion of rent or, when the tenant portion of rent is $50 or less, a minimum income standard of $2500 annually for households that participate in a federal, state or local government rental assistance program does not mathematically harmonize. If the tenant's portion of rent was $50, $50 multiplied 2.5 times is $125 monthly and $1500 annually, but the rule allows for the minimum income standard to be $2500 annually instead of the $1500 annually. Conversely, if the tenant portion of rent was $51, the minimum income standard would be $1530 annually ($51 x 2.5 x 12), which yields a lower minimum income standard than what is allowed for when the household tenant portion is less than $50. The commenter suggests that this approach is illogical and could lead to Fair Housing discrimination complaints as owners could be accused of discriminating against those residents with lower than $50 portion by requiring them to have a higher minimum income standard. The commenter supports the $2500 annually standard as reasonable, but proposes that the threshold for when the $2500 could be used be increased from $50 to $83.

STAFF RESPONSE: Staff agrees with the Commenter's concerns but not the proposed resolution. Instead, the rule has been updated to read "The minimum income standard for households participating in a voucher program is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually."

COMMENT SUMMARY: §10.610(b)(1)(D)(iii) relating to assistance/service animals--Commenter (3) represents that she is committed to reasonably accommodating persons with disabilities who require an assistance/service animal, but expresses concern regarding the health and safety of all residents. The Commenter contends that, to mitigate the potential impact of assistance/service animals on other residents, that all animals, including assistance/service animals, be approved and registered before the assistance/service animal is allowed to live at the property. The Commenter outlines a registration process and proposes that rules are needed for assistance/service animals related to restraints/behavior, animal supervision, and sanitary standards.

STAFF RESPONSE: Staff recommends no change in response to the comment. Under the Fair Housing Act ("FHA"), to which all multifamily properties in the Department's portfolio are subject, assistance animals are defined as animals that are not pets. While the ADA has refined the definition and specific requirements for service animals, HUD Notice FHEO-2013-01 concludes that the definition of "service animal" contained in ADA regulations does not limit housing providers' obligations to grant reasonable accommodation requests for assistance animals in housing under either the FHA or Section 504. In addition, under the FHA and Section 504, assistance animals are not considered pets. Neither the FHA nor Section 504 requires a service/assistance animal to be individually trained or certified. To determine if an animal is a service/assistance animal, the owner is prohibited from asking about the nature or extent of a person's disability, but can make two (2) inquiries: 1) Is this a service/assistance animal that is required because of a disability? and 2) What work or task has the animal been trained to perform? An owner is further prohibited from requiring documentation, such as proof that the animal has been certified, trained or licensed as a service/assistance animal.

In response to the concerns regarding the behavior of a service/assistance animal, HUD Notice FHEO-2013-01 expands on an owner's recourse options. Service/assistance animals must be permitted to accompany the individual with the disability to all areas of a Development where persons are normally allowed to go unless: 1) the specific animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation; or 2) the specific animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. This Notice states that under Section 504 and the FHA, if a property has extended a reasonable accommodation and a pet's behavior rises to the level that HUD's guidance has considered in the notice, the Development, on a case by case basis should meet with the tenant to discuss the issue where possible, submit a notice to the tenant regarding the service animal's behavior, and may request modi-

fications in behavior or assurances that behavior will not reoccur as a condition to retaining the accommodation for the service animal. The referenced notice also provides that a housing provider may require a tenant to cover the cost of housing repairs for damage the animal causes to the dwelling unit or common areas, reasonable wear and tear excepted, if it is the provider's practice to assess tenants for any damage they cause to the premises. As a reminder, however, no deposits may be charged for a reasonable accommodation and no pet deposits may be charged for service animals.

COMMENT SUMMARY: §10.610(b)(1)(A)(i) and (ii) regarding inclusion of income and rent limits and student restrictions/exceptions in the Tenant Selection Criteria--Commenters (2), (4), and (5) all expressed that to list all income limits and rent limits in the Tenant Selection Criteria would be too confusing. Commenters (2) and (5) propose that only the highest tier of income and rent restrictions be required. As described by Commenter (5), when an applicant qualifies for a lower tier and none is available, it confuses and frustrates that applicant. Commenter (2) asserts that further clarification is needed, but does not express what needs clarifying or what the Department could do to further clarify. Commenter (4) was the only commenter who suggests that including student restrictions and exceptions to those restrictions in the Tenant Selection Criteria for combined properties would be confusing for the applicants and residents; but, offers no reason as to why it would be confusing, nor was any alternative proposed.

STAFF RESPONSE: Staff recommends no change in response to these comments. For a unit to be considered a program unit, the unit must meet three (3) conditions 1) that it is occupied with a household whose gross income is equal to/less than the income limit for that household size; 2) that the gross rent is equal to/less than the rent limit for that bedroom size; and 3) that the unit is suitable for occupancy. While these are the three (3) main tenets of multifamily programs administered by the Department, another provision that would immediately disqualify a household is the student status of each member in the household. All multifamily programs administered by the Department have income limits and most programs have student restrictions. In some cases, a property could have multiple programs, each of which has their own income limits and/or student rules. When a property has multiple programs, in most cases, the qualifying income limits and applicable student rules are different under each program. An applicant would have no other way of understanding the expectation that they would need to have a gross income less than a specific predetermined limit; or, that, even if the household is income eligible, being a student could affect their ability to occupy a unit. Including income limits and student restrictions/exceptions in the Tenant Selection Criteria would eliminate applicants, who know they would not income qualify or that their household consists of ineligible students, from submitting application and paying an application fee, thus mitigating the administrative burden on staff and applicants.

COMMENT SUMMARY: §10.610(b) and (e)(4)(B) regarding record retention of Tenant Selection Criteria--The rule, as proposed, requires that the Tenant Selection Criteria under which an applicant was screened must be included in the household's file or, in the case an applicant is denied, be maintained with the denied application. Commenter (2) alleges that the Tenant Selection Criteria is 10+ pages and that it would be overkill to print those 10+ pages for every applicant's application. She describes their current process of maintaining a signature page only with the application and proposes that all revised Tenant Selection Criteria be kept in a binder in date order for easy reference.

STAFF RESPONSE: Staff recommends no change in response to the comment. Prior to the rule being presented today, the policies outlined in this proposed rule were required, but expected to be part of one larger policy referred to as the "Tenant Selection Criteria". The rule is being revised to allow for Owners to comply by maintaining each policy and/or procedure separately. Of all the policies required under the proposed rule, the only policy expected to be maintained in a tenant or denied applicant file is the Tenant Selection Criteria under which that household was considered. While the Department applauds the Commenter's diligence in maintaining a signature page, there is no current requirement that the Tenant Selection Criteria be signed. Further, beyond suggesting that this is "overkill" no other reason was offered for consideration.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

§10.610. Written Policies and Procedures.

(a) The purpose of this section is to outline policies and/or procedures that are required to have written documentation.

(1) Owners must inform applicants/tenants in writing, at the time of application or other action described in this section, that such policies/procedures are available, and that the Owner will provide copies upon request to applicants/tenants or their representatives.

(2) The Owner must have all policies and related documentation required by this section available in the leasing office or wherever applications are taken.

(3) All policies must have an effective date. Any changes require a new effective date.

(4) In general, policies cannot be applied retroactively. Tenants who already reside in the development or applicants on the wait list at the time new or revised tenant selection criteria are applied and who are otherwise in good standing under the lease or wait list, must not receive notices of termination or non-renewal based solely on their failure to meet the new or revised tenant selection criteria or be passed over on the wait list. However, criteria related to program eligibility may be applied retroactively when a market development receives a new award of tax credits, federal or state funds and a household is not eligible under the new program requirements, or when prior criteria violate federal or state law.

(b) Tenant Selection Criteria. Owners must maintain written Tenant Selection Criteria. The criteria under which an applicant was screened must be included in the household's file.

(1) The criteria must include:

(A) Requirements that determine an applicant's basic eligibility for the property, including any preferences, restrictions, and any other tenancy requirements. The tenant selection criteria must specifically list:

(i) The income and rent limits;

(ii) When applicable, restrictions on student occupancy and any exceptions to those restrictions; and,

(iii) Fees and/or deposits required as part of the application process.

(B) Applicant screening criteria, including what is screened and what scores or findings would result in ineligibility.

(i) The screening criteria must avoid the use of vague terms such as "elderly," "bad credit," "negative rental history," "poor housekeeping," or "criminal history" unless terms are clearly defined within the criteria made available to applicants.

(ii) Applicants must be provided the names of any third party screening companies upon request.

(C) Occupancy Standards. If fewer than 2 persons (over the age of 6) per bedroom for each rental unit are required for reasons other than those directed by local building code or safety regulations, a written justification must be provided.

(D) The following statements:

(i) The Development will comply with state and federal fair housing and antidiscrimination laws; including, but not limited to, consideration of reasonable accommodations requested to complete the application process. Chapter 1, Subchapter B of this title provides more detail about reasonable accommodations.

(ii) Screening criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, the Federal Fair Credit Reporting Act, program guidelines, and the Department's rules.

(iii) Specific animal, breed, number, weight restrictions, pet rules, and pet deposits will not apply to households having a qualified service/assistance animal(s).

(E) Notice to applicants and current residents about Violence Against Women Reauthorization Act of 2013 ("VAWA") protections.

(F) Specific age requirements if the Development is operating as Housing for Older Persons under the Housing for Older Persons Act of 1995 as amended (HOPA), or as required by federal funds to have an Elderly Preference, and in accordance with a LURA.

(2) The criteria must not:

(A) Include preferences for admission, unless such preference is:

(i) Allowed for under program rules; or,

(ii) The property receives Federal assistance and has received written approval from HUD, USDA, or VA for such preference.

(B) Exclude an individual or family from admission to the Development solely because the household participates in the HOME Tenant Based Rental Assistance Program, the housing choice voucher program under Section 8, United States Housing Act of 1937 (42 U.S.C. §1-437), or other federal, state, or local government rental assistance program. If an Owner adopts a minimum income standard for households participating in a voucher program, it is limited to the greater of a monthly income of 2.5 times the household's share of the total monthly rent amount or $2,500 annually; or,

(C) In accordance with VAWA, deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Reasonable Accommodations Policy. Owners must maintain a written Reasonable Accommodations policy. The policy must be maintained at the Development. Owners are responsible for ensuring that their employees and contracted third party management companies are aware of and comply with the reasonable accommodation policy.

(1) The policy must provide:

(A) Information on how an applicant or current resident with a disability may request a reasonable accommodation; and,

(B) A timeframe in which the Owner will respond to a request.

(2) The policy must not:

(A) Require a household to make a reasonable accommodation request in writing;

(B) Require a household to provide specific medical or disability information other than the disability verification that may be requested to verify eligibility for reasonable accommodation or special needs set aside program;

(C) Exclude a household with person(s) with disabilities from admission to the Development because an accessible unit is not currently available; or,

(D) Require a household to rent a unit that has already been made accessible.

(d) Wait List Policy. Owners must maintain a written wait list policy, regardless of current unit availability. The policy must be maintained at the Development.

(1) The policy must include procedures the Development uses in:

(A) Opening, closing, and selecting applicants from the wait list;

(B) How preferences are applied; and,

(C) Procedures for prioritizing applicants needing accessible units in accordance with 24 CFR 8.27 and Chapter 1, Subchapter B of this title.

(2) Developments with additional rent and occupancy restrictions must maintain a waiting list for their lower rent restricted units. Unless otherwise approved at application, underwriting and cost certification, all unit sizes must be available at the lower rent limits. The wait list policy for Developments with lower rent restricted units must address how the waiting list for their lower rent restricted units will be managed. The policy must not give a preference to prospective applicants over existing households. However, a Development may, but is not required to, prioritize existing households over prospective applicants.

(e) Denied Application Policies. Owners must maintain a written policy regarding procedures for denying applications.

(1) The policy must address the manner by which rejections of applications will be handled, including timeframes and appeal procedures, if any.

(2) Within seven (7) days after the determination is made to deny an application, the owner must provide any rejected or ineligible applicant that completed the application process a written notification of the grounds for rejection. The written notification must include:

(A) The specific reason for the denial and reference the specific leasing criteria upon which the denial is based; and,

(B) Contact information for any third parties that provided the information on which the rejection was based and information on the appeals process, if one is used by the property.

(3) The Development must keep a log of all denied applicants that completed the application process to include:

(A) Basic household demographic and rental assistance information, if requested during any part of the application process;

(B) The specific reason for which an applicant was denied, the date the decision was made; and,

(C) The date the denial notice was mailed or hand-delivered to the applicant.

(4) A file of all rejected applications must be maintained the length of time specified in the applicable program's recordkeeping requirements and include:

(A) A copy of the written notice of denial; and,

(B) The Tenant Selection Criteria policy under which an applicant was screened.

(f) Non-renewal and/or Termination Notices. Owners must maintain a written policy regarding procedures for providing households non-renewal and termination notices.

(1) The owner must provide in any non-renewal or termination notice, a specific reason for the termination or non-renewal.

(2) The notification must:

(A) Be delivered as required under applicable program rules;

(B) Include information on rights under VAWA;

(C) State how a person with a disability may request a reasonable accommodation in relation to such notice; and,

(D) Include information on the appeals process if one is used by the property.

(g) Unit Transfer Policies. Owners must maintain a written policy regarding procedures for households to request a unit transfer. The policy must address the following:

(1) How security deposits will be handled for both the current unit and the new unit;

(2) How transfers related to a reasonable accommodation will be addressed; and,

(3) For HTC Developments, how transfers will be handled with regard to the multiple building project election on IRS Form(s) 8609 line 8(b) and accompanying statements in accordance with §10.616 of this subchapter, concerning Household Unit Transfer Requirements for All Programs.

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

Filed with the Office of the Secretary of State on April 4, 2016.

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2330

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10 TAC §10.620

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 10, Uniform Multifamily Rules, §10.620, concerning Monitoring for Non-Profit Participation, HUB, or CHDO Participation, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 32).

REASONED JUSTIFICATION. The purpose of the amendment is to codify the new requirement in the HOME Final Rule, 24 CFR Part 92, as it relates to long-term monitoring of a Community Housing and Development Organization ("CHDO") for HOME Developments that were awarded funds from the CHDO set aside on or after August 23, 2013, into the Department's Monitoring Rules.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from January 1, 2016, through February 1, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

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

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Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2330

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CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts without changes amendments to 10 Texas Administrative Code Chapter 80, §§80.3, 80.30, 80.32, 80.36, 80.41, 80.71, 80.73 and 80.90 relating to the regulation of the manufactured housing program. The rules are adopted without changes to the proposed text and will not be republished in the *Texas Register.* The proposed amendments were published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 883).

The rules are adopted for clarification purposes.

The rules as proposed on February 5, 2016, are adopted as final rules and are effective thirty (30) days following the date of publication in the *Texas Register* of notice that the rules are adopted.

The following is a restatement of the rules' factual basis:

Section 80.3(f): Revised to clarify the installer is also eligible to request an industry inspection per §1201.355(b) of the Standards Act.

Section 80.30(f): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.30(g): Revised to clarify the rule also relates to any advertisements in social media.

Section 80.32(u): The new section clarifies how long a person has to exercise their right of rescission without penalty or charge.

Section 80.36(a): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.36(d): Reworded to reference the definition of a salvaged home as defined in §1201.461 of the Standards Act.

Section 80.41(d)(6)(B): The new subparagraph enables the continuing education provider to submit their renewal application and fee and continue operating. This will be most beneficial in the event that a renewal is pending and the regularly scheduled board meetings are postponed and or rescheduled, or canceled due to lack of a quorum.

Section 80.41(f)(1): The revision will assists in preventing former license holders whose license was revoked, suspended, and/or denied from applying for a salesperson's license when they may be viewed as unsuitable to work in the manufactured housing industry.

Section 80.71(d): Adds new subsection to clarify that the Department may serve the notice of hearing on the respondent to the last known address as shown by the Department's records.

Section 80.71(f): Adds new subsection to clarify the process when a default is granted by the administrative law judge without issuance of a default proposal for decision.

Section 80.73(e): Clarifies the timeframe in which the Department requires the licensee to submit the completed service or work orders.

Section 80.73(f): Revised to remind license holders of the risk of requesting an extension without sufficient basis well in advance in case the request is denied.

Section 80.90(a)(6): Revised to include personal property in the designation for use as a dwelling that requires evidence of a satisfactory habitability inspection by the Department.

There were no comments received during the comment period and no requests were received for a public hearing to take comments on the rules.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

Filed with the Office of the Secretary of State on April 1, 2016.

TRD-201601543

Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

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Proposal publication date: February 5, 2016

For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §§80.30, 80.32, 80.36

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

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Joe A. Garcia

Executive Director, Manufactured Housing Division

Texas Department of Housing and Community Affairs

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SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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SUBCHAPTER E. ENFORCEMENT

10 TAC §80.71, §80.73

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

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Joe A. Garcia
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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.90

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL GRADUATION

19 TAC §74.1025

The Texas Education Agency adopts new §74.1025, concerning individual graduation committee (IGC) review. The new section is adopted with changes to the proposed text as published in the December 4, 2015 issue of the *Texas Register* (40 TexReg 8717). The new rule reflects requirements implemented by Senate Bill (SB) 149, 84th Texas Legislature, Regular Session, 2015.

REASONED JUSTIFICATION. Texas Education Code, §39.025(a), prohibits a student from receiving a high school diploma until the student has performed satisfactorily on state end-of-course (EOC) assessments. Students must perform satisfactorily on the following five EOC assessments: Algebra I, Biology, English I, English II, and U.S. History.

The 84th Texas Legislature, Regular Session, 2015, passed SB 149, requiring each school district and open-enrollment charter school to establish an IGC for each 11th or 12th grade student who fails to comply with the EOC assessment performance requirements for not more than two courses. The committee must be established at the end of or after the student's 11th grade year to determine whether a student may qualify to graduate. A student may not graduate under this provision before the student's 12th grade year. SB 149 requires the commissioner to adopt rules to establish alternative IGC members, establish a timeline for decisions by IGCs, and require district reporting of certain data related to IGCs through the Public Education Information Management System (PEIMS). Timelines in the adopted new rule facilitate the ability for districts and charters to properly report students who graduate based on an IGC decision and to receive credit for these students as graduates.

New §74.1025, Individual Graduation Committee Review, identifies the required members of an IGC and establishes rules for identifying alternative members of a committee in the event that required members are unavailable. The rule also establishes a timeline by which IGCs must be established for eligible students and by which IGC decisions for a given school year must be finalized. It also establishes school district PEIMS reporting requirements related to the IGC.

Adopted new 19 TAC §74.1025 contains the following changes since published as proposed.

In response to public comment, §74.1025(c) was modified to add language to specify that a school district or charter school may

not convene an initial IGC after June 10 or before the start of the next school year.

In response to public comment, §74.1025(d) was modified to clarify that in order for a student to be included as a graduate for a given school year, an IGC must make a determination regarding graduation no later than August 31. Language was also added to specify that determinations regarding graduation made after August 31 will require the student to be reported as a graduate in the subsequent school year.

In addition, new §74.1025(m) was added to clarify that the IGC requirements do not apply to students who receive special education services.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 4, 2015, and ended January 4, 2016. Following is a summary of the public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 74, Curriculum Requirements, Subchapter BB, Commissioner's Rules Concerning High School Graduation, §74.1025, Individual Graduation Committee Review.

Comment. One district administrator expressed concerns with the timelines proposed in 19 TAC §74.1025(c) and (d) for IGC actions. The commenter stated that requiring the IGC to be established by June 1 and decisions implemented by August 31 does not provide incentives for students to retake the assessment(s) during their senior year.

Agency Response. The agency disagrees and has determined that sufficient time is provided within this window to allow students to take the July retest administration. Furthermore, each district and open-enrollment charter school is required by 19 TAC §101.3022(e) to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily. In response to other comments, however, the agency modified 19 TAC §74.1025(c) at adoption to change the deadline by which a school district must initially convene an IGC to June 10 to allow for schools to receive EOC reports and convene an IGC.

Comment. One district administrator inquired whether the proposed rules would allow students who start working on their required IGC work during the school year to elect not to take any more EOCs exams.

Agency Response. The agency provides the following clarification. Section 101.3022(e) requires school districts and open-enrollment charter schools to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily.

Comment. One district administrator stated that allowing students to skip retest opportunities would not count negatively or positively toward accountability and would be unfair to districts that are requiring students to continue to retest.

Agency Response. The agency provides the following clarification. Section 101.3022(e) requires school districts and open-enrollment charter schools to provide students with the opportunity to retake an EOC exam on which the student failed to perform satisfactorily.

Comment. Houston Independent School District (ISD) requested that in proposed 19 TAC §74.1025(c), the June 1 deadline by which a school district must establish an IGC for eligible students be eliminated or, if not eliminated, revised to June 21. The commenter added that the proposed rule would impose an undue burden on schools working to support seniors who need results from spring STAAR® EOC testing to qualify for an IGC. The commenter stated that the proposed rules afford such a limited amount of time that it would be extremely difficult to comply with the requirements, especially for larger high schools and/or schools with large numbers of at-risk students.

Agency Response. The agency agrees that the deadline to convene an IGC for eligible students should be moved back to allow time for EOC reporting to be received by schools. The agency modified 19 TAC §74.1025(c) at adoption to change the deadline to June 10 to allow for schools to receive EOC reports and convene an initial IGC.

Comment. The Texas School Alliance stated that the proposed rule language is generally aligned to the provisions in Senate Bill 149.

Agency Response. The agency agrees. The agency also modified 19 TAC §74.1025 at adoption to respond to other comments.

Comment. The Texas School Alliance stated that proposed 19 TAC §74.1025(c), the deadline by which a school district must establish an IGC for eligible students, may unnecessarily preclude students from the opportunity to graduate in the summer, particularly if the students become eligible for the IGC based on summer retest results, if there is any delay in receiving spring test scores back from the state assessment contractor or the school uses a year-round or other atypical calendar. The Texas School Alliance suggested instead either requiring districts to adopt local policies that establish a deadline or establishing a sliding deadline based on a specific number of days prior to local graduation dates so that students' opportunities are consistent across the state.

Agency Response. The agency agrees that the deadline to convene an IGC for eligible students should be moved back to allow time for EOC reporting to be received by schools. However, the agency disagrees that allowing time for results from summer retest opportunities is necessary for an initial convening of an IGC. In response to this and other comments, the agency modified 19 TAC §74.1025(c) at adoption to change the deadline to June 10 to allow for schools to receive EOC reports and convene an initial IGC.

Additionally, the agency provides the following clarification. The deadline in proposed 19 TAC §74.1025(c) is the date by which a school district must establish an initial IGC for eligible students, not the date by which an IGC must make a determination regarding graduation.

Comment. The Texas School Alliance stated that in proposed 19 TAC §74.1025(d), the August 31 deadline by which an IGC determination must be made, together with the June 1 deadline to convene an IGC, create a very narrow window of opportunity at the start of the school year in which to establish an IGC and make determinations for students who hope to graduate in December. It is especially critical for mobile students since the transmission of pertinent records from one district to another may not be completed in time for an IGC to be established, much less to reach a determination, by August 31. The Texas School Alliance suggested either allowing districts to adopt local policies that determine the last date by which IGCs can determine whether students have met requirements to graduate or establishing a sliding deadline based on a specific number of days, preferably 30 days, into the term by which IGCs must reach determinations regarding graduation.

Agency Response. The agency provides the following clarification. The rules do not prohibit an IGC from making a determination prior to the start of the next school year. In response to this and other comments, the agency modified 19 TAC §74.1025(d) at adoption to read, "In order for a student to be included as a graduate in the school district's or charter school's graduation data in the school year in which the student meets the requirements provided by law to graduate under individual graduation committee provisions, an individual graduation committee must make a decision to award a diploma no later than August 31 immediately following that school year. A student who graduates as a result of an individual graduation committee decision after August 31 shall be reported on the subsequent year's graduation data."

Comment. The Texas School Alliance stated that proposed 19 TAC §74.1025(g) calls for the principal to "designate a teacher certified in the subject of the EOC assessment," who is most familiar with the student's performance in the subject, to serve on the IGC if the student's teacher is not available. While the intent is good, the rule may impose hardships for certain schools, particularly those that are small and/or highly specialized. The Texas School Alliance offered the following proposed solution: allow for other suitable teachers, campus instructional support personnel, or administrators to serve as an IGC member in the event that the teacher described by the proposed rule language is not available to serve on the IGC.

Agency Response. The agency disagrees and has determined that it is important to include a teacher with subject matter expertise on the committee and that the language is appropriate as proposed.

Comment. Northeast ISD stated that the deadline for convening an IGC proposed in 19 TAC §74.1025(c) is problematic for two main reasons. First, the results of EOC assessments will not be available until June 3, 2016, possibly after the allowable time for establishing an IGC. A short timeframe between the May test results and June 1 IGC deadline would create an unnecessary burden on high schools with large at-risk student populations. Second, students may retake STAAR® assessments in July. Some students may become eligible for an IGC after the summer test administration schedule and the June 1 deadline. Based on the proposed rules, an IGC could not be convened before the start of the next school year and newly eligible students from the summer test administration would not be qualified to participate in a summer graduation ceremony. Northeast ISD requested that the restriction in 19 TAC §74.1025(c) on when a school district may establish an IGC for eligible students be eliminated entirely.

Agency Response. The agency disagrees that the June deadline should be eliminated entirely and has determined that a deadline by which an IGC must be initially convened is necessary for consistency in reporting data related to IGCs. In response to this and other comments, the agency modified 19 TAC §74.1025(c) at adoption to read, "A school district or an open-enrollment charter school may not establish an initial individual graduation committee for eligible students after June 10 or before the start of the next school year. Once the individual graduation committee has been established, it is the original individual graduation committee for that student."

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §28.0258(c), which requires the commissioner of education to establish by rule a procedure for the appointment of alternative individual graduation committee members in the event that a required member is unable to serve. The rule is required to include the appointment of an advocate for the student if the student's parent or person standing in parental relation to the student is unable to serve. TEC, §28.0258(i), requires the commissioner to establish by rule a timeline for an individual graduation committee to make a determination regarding whether a student is qualified to graduate. TEC, §28.0259, requires the commissioner to adopt rules regarding the requirement that school districts report through the Public Education Information Management System (PEIMS) information regarding the number of students for whom an individual graduation committee was established and the number of students who were awarded a diploma based on the decision of an individual graduation committee.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §28.0258 and §28.0259, as added by Senate Bill 149, 84th Texas Legislature, 2015.

§74.1025. Individual Graduation Committee Review.

(a) Effective beginning with the 2014-2015 school year, in accordance with the Texas Education Code (TEC), §28.0258, §101.3022 of this title (relating to Assessment Requirements for Graduation), and the course requirements in Chapter 74, Subchapter B, of this title (relating to Graduation Requirements), a school district or an open-enrollment charter school may award a high school diploma to a student who has taken but failed to achieve the end-of-course (EOC) assessment graduation requirements for no more than two courses if the student has qualified to graduate by means of an individual graduation committee.

(b) A school district or an open-enrollment charter school shall establish an individual graduation committee at the end of or after a student's 11th grade year to determine whether the student may qualify to graduate. A student may not qualify to graduate as a result of an individual graduation committee decision before the student's 12th grade year.

(c) A school district or an open-enrollment charter school may not establish an initial individual graduation committee for eligible students after June 10 or before the start of the next school year. Once the individual graduation committee has been established, it is the original individual graduation committee for that student.

(d) In order for a student to be included as a graduate in the school district's or charter school's graduation data in the school year in which the student meets the requirements provided by law to graduate under individual graduation committee provisions, an individual graduation committee must make a decision to award a diploma no later than August 31 immediately following that school year. A student who graduates as a result of an individual graduation committee decision after August 31 shall be reported in the subsequent year's graduation data.

(e) If a student leaves a school district after an original individual graduation committee has been established and before that original individual graduation committee awards a high school diploma to the student, any other district that later enrolls the student shall request information from the student's original individual graduation committee of record and shall implement the original individual graduation committee recommendations to the extent possible.

(f) The individual graduation committee shall consist of the following:

(1) the principal or principal's designee;

(2) for each EOC assessment instrument on which the student failed to perform satisfactorily, the teacher of the course;

(3) the department chair or lead teacher supervising the teacher described by paragraph (2) of this subsection; and

(4) as applicable:

(A) the student's parent or person standing in parental relation to the student;

(B) a designated advocate if the person described by subparagraph (A) of this paragraph is unable to serve; or

(C) the student, at the student's option, if the student is at least 18 years of age or is an emancipated minor.

(g) In the event that the teacher identified in subsection (f)(2) of this section is unavailable, the principal shall designate a teacher certified in the subject of the EOC assessment on which the student failed to perform satisfactorily and who is most familiar with the student's performance in that subject area as an alternate member of the committee.

(h) In the event that the student's parent or person standing in parental relation to the student is unavailable to participate in the individual graduation committee, the principal shall designate an advocate with knowledge of the student to serve as an alternate member of the committee.

(i) Each school district and open-enrollment charter school shall report through the Public Education Information Management System (PEIMS) the following:

(1) the number of students each school year for which an individual graduation committee is established; and

(2) the number of students each school year who are awarded a diploma based on the decision of an individual graduation committee.

(j) A district shall maintain documentation to support the decision of the individual graduation committee to award or not award a student a high school diploma.

(k) This section only applies to a student classified by the school district or open-enrollment charter school as an 11th or 12th grade student in the 2014-2015, 2015-2016, or 2016-2017 school year.

(l) Provisions of this section expire September 1, 2017. A student may graduate by means of an individual graduation committee if the student has qualified for an individual graduation committee under the TEC, §28.0258, and the individual graduation committee convened prior to September 1, 2017.

(m) A student receiving special education services is not subject to the individual graduation committee requirements in the TEC, §28.0258, or the provisions of this section. As provided in §89.1070 of this title (relating to Graduation Requirements) and §101.3023 of this title (relating to Participation and Graduation Assessment Requirements for Students Receiving Special Education Services), a student's admission, review, and dismissal (ARD) committee determines whether a student is required to achieve satisfactory performance on an EOC assessment to graduate.

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601478

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 153. SCHOOL DISTRICT PERSONNEL

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING PROFESSIONAL DEVELOPMENT

19 TAC §153.1013

The Texas Education Agency (TEA) adopts new §153.1013, concerning suicide prevention training. The new section is adopted without changes to the proposed text as published in the January 15, 2016 issue of the *Texas Register* (41 TexReg 566) and will not be republished. The adopted new rule provides a schedule for conducting suicide prevention training to all existing school district and open-enrollment charter school educators, establishes when new school district and open-enrollment charter school educators are to be trained, addresses how previous training can be credited, and describes locally maintained paperwork requirements.

REASONED JUSTIFICATION. House Bill (HB) 1386, 82nd Texas Legislature, Regular Session, 2011, added the Health and Safety Code (HSC), §161.325, which required the Department of State Health Services, in coordination with the TEA, to provide a list of recommended best practice-based suicide prevention programs for implementation in public elementary, junior high, middle, and high schools. The statute provides that each school district may select from the list a program or programs appropriate for implementation in the district.

Senate Bill 460, 83rd Texas Legislature, Regular Session, 2013, amended the HSC, §161.325, to require each school district to provide suicide prevention training for teachers, counselors, principals, and all other appropriate personnel. A school district was required to provide the training at an elementary campus only to the extent that sufficient funding and programs were available. School districts were allowed to implement a program on the list of recommended best practice-based suicide prevention programs to meet the requirements of this legislation. School districts that provided this training were required to train school district employees at least one time and maintain the records of the training to include the name of each employee who participated in training.

HB 2186, 84th Texas Legislature, Regular Session, 2015, amended the Texas Education Code, §21.451(d), to require all school districts and open-enrollment charter schools to provide suicide prevention training to all existing educators on a schedule adopted in rule by the TEA. The legislation also requires all new school district and open-enrollment charter school educators to be trained on an annual basis as part of new employee orientation. School districts and open-enrollment charter schools may select training programs from the list of recommended best practice-based programs or they may conduct an independent review of an online program that complies with guidelines developed by the TEA.

Adopted new 19 TAC §153.1013 requires school districts and open-enrollment charter schools to provide suicide prevention training to all new educators as part of new employee orientation during the 2016-2017 school year and each subsequent school year. The adopted new rule also requires that the training be provided to all currently employed educators by September 30, 2016, and allows for training provided to existing educators on or after September 1, 2013, to meet these suicide prevention training requirements under certain conditions.

In accordance with the HSC, §161.325, the adopted new rule requires school districts to continue to maintain records that include the name of each educator who participated in the suicide prevention training. Additionally, the adopted new rule encourages open-enrollment charter schools to maintain suicide prevention training records that include the name of each educator who participated in the suicide prevention training.

The TEA has posted guidelines for suicide prevention training on its website and informed school districts and open-enrollment charter schools about the new requirements through TEA correspondence on August 26, 2015.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began January 15, 2016, and ended February 16, 2016. Following is a summary of the public comment received and corresponding agency response regarding proposed new 19 TAC Chapter 153, School District Personnel, Subchapter BB, Commissioner's Rules Concerning Professional Development, §153.1013, Suicide Prevention Training.

Comment. The Texas Classroom Teachers Association (TCTA) commented in support of the new rule as proposed. The TCTA stated that it appreciates and supports the way the proposed training schedule finds a balance between other educator training requirements and suicide prevention training.

Agency Response. The agency agrees that the proposed schedule provides a balanced approach to ensuring that all educators receive suicide prevention training.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015, which requires the Texas Education Agency to adopt in rule a schedule by which each school district and open-enrollment charter school will provide suicide prevention training to its educators.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §21.451(d), as amended by House Bill 2186, 84th Texas Legislature, Regular Session, 2015.

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

Filed with the Office of the Secretary of State on March 28, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.6

The Texas Board of Nursing (Board) adopts amendments to §211.6, concerning Committees of the Board. The amendments are being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1076) and will not be republished.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §301.151 and §301.1595. Section 301.1595 of the Nursing Practice Act requires the Board to adopt rules regarding the purpose, structure, and use of advisory committees. The section also enumerates additional issues that the Board must address by rule. The adopted amendments are necessary to ensure compliance with the requirements of §301.1595 and for consistency with amendments to §213.23 of this title (relating to Decision of the Board) that are being adopted simultaneously with these rule amendments and published elsewhere in this issue of the *Texas Register*.

First, the adopted amendments remove reference to the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule text. This committee ceased operation when the deferred disciplinary action pilot program ended and was scheduled to be abolished no later than January 1, 2014 by the provisions of the rule. As such, the adopted amendments eliminate the obsolete provision from the rule.

Second, the adopted amendments clarify that committee members will be appointed by the Board and that the majority of the members of a committee must be present at a meeting in order to establish a quorum. This amendment is consistent with the provisions of Texas Government Code Chapter 552 and Texas Occupations Code §301.1595.

Third, the adopted amendments reiterate the statutory requirement of §301.1595(d) that, although a Board member may serve as a liaison to a committee and report to the Board the recommendations of the committee for consideration by the Board, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Fourth, although the Board assigns topics to its committees for evaluation and recommendation, the adopted amendments make clear that committee members may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge. Further, the adopted amendments permit committee members to request and/or receive training to assist them in completing their work.

Finally, the adopted amendments include provisions that are consistent with other amendments that are being made to §213.23 (Decision of the Board) of this chapter, simultaneously with these rule amendments. These changes clarify that the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties, including consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1). These

adopted changes are being published elsewhere in this issue of the *Texas Register.*

How the Adopted Section Will Function

Adopted §211.6(b)(3) provides that the Board's Disciplinary Committee shall have the authority to determine all matters of eligibility for licensure and discipline of licenses, including temporary suspension of a license, administrative and civil penalties, and consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

Adopted §211.6(f)(1)(E) eliminates the Deferred Disciplinary Action Pilot Program Advisory Committee from the rule.

Adopted §211.6(f)(2) states that members shall be appointed by the Board.

Adopted §211.6(f)(3) states that the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Adopted §211.6(f)(5) provides that each committee's work and usefulness shall be evaluated periodically.

Adopted §211.6(f)(6) provides that the committees will provide notice of meetings on the Secretary of State's web site to allow the public an opportunity to participate.

Adopted §211.6(f)(8) states that committees may identify topics and/or issues for development and communication to the Board for the consideration and/or issuance of a formal charge.

Adopted §211.6(f)(9) requires the majority of the members of a Committee to be present at a meeting in order to establish a quorum.

Adopted §211.6(f)(13) states that committee members may request and/or receive training as necessary to assist them in completing their work.

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendments are adopted under the Occupations Code §301.151 and §301.1595.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.1595(a) provides that the Board may appoint advisory committees to perform the advisory functions assigned by the Board.

Section 301.1595(b) states that an advisory committee shall provide independent expertise on Board functions and policies, but may not be involved in setting Board policy. Section 301.1595(c) states that the Board shall adopt rules regarding the purpose, structure, and use of advisory committees, including rules on: the purpose, role, responsibility, and goal of an advisory committee; the size and quorum requirements for an advisory committee; the composition and representation of an advisory committee; the qualifications of advisory committee members, such as experience or area of residence; the appointment procedures for advisory committees; the terms of service for advisory committee members; the training requirements for advisory committee members, if necessary; the method the Board will use to receive public input on issues addressed by an advisory committee; and the development of Board policies and procedures to ensure advisory committees meet the requirements for open meetings under Chapter 551, Government Code, including notification requirements.

Section 301.1595(d) provides that a Board member may not serve as a member of an advisory committee, but may serve as a liaison between an advisory committee and the Board. A Board member liaison that attends advisory committee meetings may attend only as an observer and not as a participant. Further, a Board member liaison is not required to attend advisory committee meetings. Finally, the role of a Board member liaison is limited to clarifying the Board's charge and intent to the advisory committee.

Section 301.1595(e) states that to the extent of any conflict with Chapter 2110, Government Code, this section and Board rules adopted under this section control.

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

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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6822

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.23

The Texas Board of Nursing (Board) adopts amendments to §213.23, concerning Decision of the Board. The amendments are being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1078) and will not be republished.

Reasoned Justification

The amendments are adopted under the authority of the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

In September 2011, the State Office of Administrative Hearings (SOAH) adopted 1 TAC §155.501(d). This rule permitted SOAH, in default proceedings where notice was adequate, to dismiss a matter from its docket and remand the case to the referring agency for final disposition. During the 84th Legislative Session, the Texas Legislature enacted amendments (House Bill 2154) to the Government Code §2001.058(d-1) authorizing the dismissal and remand of default cases.

The Board has considered and resolved default dismissals from SOAH at its regularly scheduled quarterly meetings since the enactment of §155.501(d) in 2011. Since that time, the number of default dismissals has continued to increase. In addition to the consideration of default dismissals at the Board's quarterly

meetings, the adopted amendments make clear that the Eligibility and Disciplinary Committee of the Board may also consider and resolve default dismissals from SOAH. This amendment is intended to increase the Board's efficiency in resolving these cases and to assist in the management of the Board's quarterly meeting agendas.

The adopted amendments also affect an individual's submission of information to the Board. Currently, the Board permits individuals to appear at its regularly scheduled quarterly meetings to address the Board prior to its deliberation and vote on a proposal for decision (PFD). In order to do so, however, the Board's current rule requires the submission of written information to the Board within certain prescribed time frames. The time frames vary, depending upon whether or not a modification is being proposed to a PFD. The adopted amendments, however, eliminate this distinction, and instead, impose a single time frame for any individual wishing to appear before the Board or submit written information for the Board's consideration regarding a PFD and/or default dismissal from SOAH. This change is intended to simplify the process for individuals and to enable more timely preparation of the Board's quarterly meeting agenda and appearance schedules.

How the Adopted Section Will Function

Adopted §213.23(a) provides that either the Board or the Eligibility and Disciplinary Committee of the Board may make final decisions in all matters relating to the granting or denial of a license or permit, discipline, temporary suspension, or administrative and civil penalties. This includes the consideration and resolution of a default dismissal from the State Office of Administrative Hearings pursuant to Tex. Gov't Code §2001.058(d-1).

Adopted §213.23(a) - (e) provides that parties shall have an opportunity to file written exceptions and/or briefs with the Board. Further, an individual wishing to file written exceptions and/or a brief for the Board's consideration must do so no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. Additionally, an individual wishing to make an oral presentation regarding a proposal for decision or default dismissal must request to do so, and file written exceptions and/or a brief, no later than 15 calendar days prior to the date of the next regularly scheduled meeting where the Board or the Eligibility and Disciplinary Committee will deliberate on the proposal for decision or default dismissal. The Board will not consider any requests for an oral presentation and/or any written exceptions and/or briefs submitted in violation of these requirements.

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendments are adopted under the Occupations Code §§301.151, 301.463(a) - (c), and 301.464(a) and the Government Code §2001.056 and §2001.058(d-1).

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.463(a) states that, unless precluded by Chapter 301 or other law, the Board may dispose of a complaint by stipulation; agreed settlement; agreed order; or dismissal.

Section 301.463(b) states that an agreed disposition of a complaint is considered to be a disciplinary order for purposes of reporting under Chapter 301 and an administrative hearing and proceeding by a state or federal regulatory agency regarding the practice of nursing.

Section 301.463(c) states that an agreed order is a public record.

Section 301.463(a) provides that the Board by rule shall adopt procedures governing informal disposition of a contested case under §2001.056, Government Code; and an informal proceeding held in compliance with §2001.054, Government Code.

Section 2001.056 states that, unless precluded by law, an informal disposition may be made of a contested case by stipulation; agreed settlement; consent order; or default. Section 2001.058(d-1) provides that, on making a finding that a party to a contested case has defaulted under the rules of the State Office of Administrative Hearings, the administrative law judge may dismiss the case from the docket of the State Office of Administrative Hearings and remand it to the referring agency for informal disposition under §2001.056. After the case is dismissed and remanded, the agency may informally dispose of the case by applying its own rules or the procedural rules of the State Office of Administrative Hearings relating to default proceedings. This subsection does not apply to a contested case in which the administrative law judge is authorized to render a final decision.

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

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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6822

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22 TAC §213.32

The Texas Board of Nursing (Board) adopts an amendment to §213.32, concerning Corrective Action Proceedings and Schedule of Administrative Fines. The amendment is being adopted without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1079) and will not be republished.

Reasoned Justification

The amendment is adopted under the authority of the Occupations Code §301.151 and §301.652.

In 2009, the Nursing Practice Act (NPA) was amended to grant the Board authority to resolve contested cases through the use of corrective actions. Pursuant to the Occupations Code §301.652, a corrective action may consist of a fine, remedial education, or a combination of a fine or remedial education. Further, a corrective action is not a disciplinary action.

The Board is required, pursuant to the Health Care Quality Improvement Act of 1986 and the Social Security Act, to report disciplinary actions to the National Practitioner Data Bank (NPDB). The Board also reports disciplinary actions to other members of the Nurse Licensure Compact under the Occupations Code Chapter 304. However, because a corrective action is not a disciplinary action, the Board does not report corrective actions to NPDB or to other nursing boards.

The adopted amendment affects individuals who are practicing in Texas on a nurse licensure privilege, but who maintain their home state residence in another nurse licensure compact state. The adopted amendment clarifies that corrective actions will not be available to these individuals for the resolution of a contested case matter in Texas. The adopted amendment conforms to the Board's practice since 2009 in this regard. Although corrective actions are currently utilized for the resolution of minor practice violations, the Board has determined that offering corrective actions to individuals practicing in Texas on a nurse licensure privilege is not appropriate because this information would not be reported to other state boards of nursing who may have an interest in their licensees' conduct in Texas.

How the Adopted Section Will Function

Adopted §213.32(4) provides that an agreed corrective action will not be available to an individual who is practicing nursing in Texas on a nurse licensure compact privilege.

Summary of Comments and Agency Response

The agency did not receive any comments on the proposal.

Statutory Authority

The amendment is adopted under the Occupations Code §301.151 and §301.652.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.652(a) states that the Board may impose a corrective action on a person licensed or regulated under Chapter 301 who violates Chapter 301 or a rule or order adopted under Chapter 301. The corrective action: may be a fine, remedial education, or any combination of a fine or remedial education; is not a disciplinary action under Subchapter J; and is subject to disclosure only to the extent a complaint is subject to disclosure under §301.466. Section 301.652(b) provides that the Board by rule shall adopt guidelines for the types of violations for which a corrective action may be imposed.

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

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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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For further information, please call: (512) 305-6822

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CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.8

The Texas Board of Nursing (Board) adopts amendments to §214.8, relating to Students. The amendments are adopted without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1328) and will not be re-published.

REASONED JUSTIFICATION. The amendments to §214.8 are adopted under the Occupations Code §301.151 and §301.157 and are necessary to provide the Board the opportunity to monitor program growth that could be considered high risk for student success and program longevity. The editorial amendments to the rule make the rule's references internally consistent with other sections in the chapter and provide clear guidance to the public.

Background

The amendments were considered at the July 31, 2015 and September 18, 2015, meetings of Board's Advisory Committee on Education (Committee). Following its discussions, the Committee voted to recommend rule amendments to the Board that would require Board approval for a twenty-five percent (25%) or greater increase in annual student enrollment. The Committee voiced concerns that an unreasonably rapid expansion in program enrollment could lead to understaffing, shortage of clinical placements, and poor student outcomes, including low passage rates on the national licensure examination.

The adopted amendments are intended to ensure a program's continuing success by requiring Board approval when a vocational nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. In evaluating a program's request, the Board will consider whether the program's projected increase in enrollment is well supported; if the program has sufficient resources to implement the increase without negatively affecting the current student population; how well the program's enrollment management plan supports the requested increase; what effect the change of enrollment may have on faculty workload; whether clinical placement and utilization will be negatively impacted; and the program's plan to evaluate the effect of the enrollment increase on the program's success. The Board's review and approval process is intended to assist programs in identifying potential risks that could negatively affect their student populations when increases in enrollment are not sufficiently planned for or are not well supported.

The factors enumerated in the adopted rule, as well as the twenty-five percent (25%) benchmark, are derived from the standards of the Accreditation Commission for Education in Nursing (ACEN). For increases in enrollment, ACEN requires its accredited programs to submit a substantive change proposal to be considered and either granted or denied based upon consideration of substantially similar factors as those contained in the

Board's adopted rule. Under the Board's rules [§214.4(c)(5) - (13)], programs with national nursing accreditation are exempted from the Board's ongoing approval requirements, provided that the program's accreditation requirements are substantially equivalent to the standards set forth in Board rule. As such, the adopted rule will require non-accredited programs to meet the same standards for increases in enrollment that accredited programs must already meet, thus placing all programs on an equal footing.

The remaining adopted amendments to §214.8(c) - (j) are editorial in nature and remove outdated and obsolete references and terminology from the section. For example, portions of the rule text that referenced outdated titles for §213.28 and §213.29 have been updated to reference the new titles of those sections. Additionally, the term "chemical dependency" has been changed to "substance use disorder" for consistency with recent changes to other Board rules (§§213.27, 213.28, and 213.29) and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

HOW THE SECTIONS WILL FUNCTION. Adopted §214.8(b) requires Board approval when a vocational nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. Under the adopted amendments, the program must notify the Board of its intent to expand its enrollment at least four months prior to implementing the change. The Executive Director, as authorized by the Board, or the Board itself will then consider whether to grant the program's request based upon a review of the factors specified in the rule. Those factors include: (1) the comparison of previous to projected nursing program enrollment by headcount; (2) enrollment projections and enrollment management plan; (3) the change of enrollment on faculty workload; (4) clinical placement/utilization; (5) additional resources required by the enrollment increase; and (6) the program's plan to evaluate the effect of the enrollment increase on the program's success.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §301.151 and §301.157.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board. Section 301.157(b)(3) states that the Board may prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

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

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Jena Abel
Assistant General Counsel
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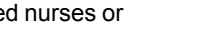

CHAPTER 215. PROFESSIONAL NURSING EDUCATION

22 TAC §215.8

The Texas Board of Nursing (Board) adopts amendments to §215.8, relating to Students. The amendments are adopted without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1332) and will not be re-published.

REASONED JUSTIFICATION. The amendments to §215.8 are adopted under the Occupations Code §301.151 and §301.157 and are necessary to provide the Board the opportunity to monitor program growth that could be considered high risk for student success and program longevity. The editorial amendments to the rule make the rule's references internally consistent with other sections in the chapter and provide clear guidance to the public.

Background

The amendments were considered at the July 31, 2015, and September 18, 2015, meetings of Board's Advisory Committee on Education (Committee). Following its discussions, the Committee voted to recommend rule amendments to the Board that would require Board approval for a twenty-five percent (25%) or greater increase in annual student enrollment. The Committee voiced concerns that an unreasonably rapid expansion in program enrollment could lead to understaffing, shortage of clinical placements, and poor student outcomes, including low passage rates on the national licensure examination.

The adopted amendments are intended to ensure a program's continuing success by requiring Board approval when a professional nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. In evaluating a program's request, the Board will consider whether the program's projected increase in enrollment is well supported; if the program has sufficient resources to implement the increase without negatively affecting the current student population; how well the program's enrollment management plan supports the requested increase; what effect the change of enrollment may have on faculty workload; whether clinical placement and utilization will be negatively impacted; and the program's plan to evaluate the effect of the enrollment increase on the program's success. The Board's review and approval process is intended to assist programs in identifying potential risks that could negatively affect their student populations when increases in enrollment are not sufficiently planned for or are not well supported.

The factors enumerated in the adopted rule, as well as the twenty-five percent (25%) benchmark, are derived from the standards of the Accreditation Commission for Education in Nursing (ACEN). For increases in enrollment, ACEN requires its accredited programs to submit a substantive change proposal to be considered and either granted or denied based upon consideration of substantially similar factors as those contained in the Board's adopted rule. Under the Board's rules [(c)(5)-(13)], programs with national nursing accreditation are exempted from the Board's ongoing approval requirements, provided that the program's accreditation requirements are substantially equivalent to the standards set forth in Board rule. As such, the adopted rule will require non-accredited programs to meet the same standards for increases in enrollment that accredited programs must already meet, thus placing all programs on an equal footing.

The remaining adopted amendments to §215.8(c)-(j) are editorial in nature and remove outdated and obsolete references and terminology from the section. For example, portions of the rule text that referenced outdated titles for §213.28 and §213.29 have been updated to reference the new titles of those sections. Additionally, the term "chemical dependency" has been changed to "substance use disorder" for consistency with recent changes to other Board rules (§§213.27, 213.28, and 213.29) and with recent changes to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.

HOW THE SECTIONS WILL FUNCTION. Adopted §215.8(b) requires Board approval when a professional nursing education program intends to expand its enrollment by twenty-five percent (25%) or more annually. Under the adopted amendments, the program must notify the Board of its intent to expand its enrollment at least four months prior to implementing the change. The Executive Director, as authorized by the Board, or the Board itself will then consider whether to grant the program's request based upon a review of the factors specified in the rule. Those factors include: (1) the comparison of previous to projected nursing program enrollment by headcount; (2) enrollment projections and enrollment management plan; (3) the change of enrollment on faculty workload; (4) clinical placement/utilization; (5) additional resources required by the enrollment increase; and (6) the program's plan to evaluate the effect of the enrollment increase on the program's success.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The amendments are adopted under the Occupations Code §301.151 and §301.157.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.157(a-1) states that a diploma program of study in this state that leads to an initial license as a registered nurse under Chapter 301 and that is completed on or after December 31, 2014, must entitle a student to receive a degree on the student's successful completion of a degree program of a public or private institution of higher education accredited by an agency recognized by the Texas Higher Education Coordinating Board. Section 301.157(b)(3) states that the Board may prescribe other rules as necessary to conduct approved schools of nursing and educational programs for the preparation of registered nurses or vocational nurses.

Section 301.157(d-1) states that a school of nursing or educational program is considered approved by the Board and, except as provided by §301.157(d-7), is exempt from Board rules that require ongoing approval if the school or program: (i) is accredited and maintains accreditation through a national nursing accrediting agency selected by the Board under §301.157(b)(5); and (ii) maintains an acceptable pass rate as determined by the Board on the applicable licensing examination under Chapter 301.

Section 301.157(d-7) states that a school of nursing or educational program approved under §301.157(d-1) shall: (i) provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency selected by the Board; (ii) notify the Board of any change in accreditation status; and (iii) provide other information required by the Board as necessary to evaluate and establish nursing education and workforce policy in this state.

Section 301.157(d-8) states that, for purposes of §301.157(d-4), a nursing program is considered to meet standards substantially equivalent to the Board's standards if the program: (i) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state; (ii) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation; (iii) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission; (iv) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and (v) graduates students who: (A) achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; (B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and (C) pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

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

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Jena Abel
Assistant General Counsel
Texas Board of Nursing
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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.9

The Texas State Board of Examiners of Psychologists adopts the repeal of §461.9, Subdoctoral Licensure, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9439). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary to reflect the consolidation of the substance of this rule with the newly adopted Board rule §463.8.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §461.17

The Texas State Board of Examiners of Psychologists adopts amendments to §461.17, Profile Information, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9440). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with the person first respectful language requirement set forth in Chapter 392 of the Texas Government Code.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.8

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.8, Licensed Psychological Associate, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9440). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §463.8

The Texas State Board of Examiners of Psychologists adopts new rule §463.8, Licensed Psychological Associate, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9441). The rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rules, but will eventually require the supervised experience necessary for licensure to be obtained as part of an organized course of study. The adopted new rule will also expand licensure opportunities by allowing applicants who possess a doctoral degree that is primarily psychological in nature, but who do not also have a master's degree, the ability to apply for licensure as a psychological associate. Lastly, the adopted new rule incorporates the designation of the title for an individual licensed under this rule, currently found in Board rule §461.9.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700

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22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.9, Licensed Specialist in School Psychology, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9442). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
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22 TAC §463.9

The Texas State Board of Examiners of Psychologists adopts new rule §463.9, Licensed Specialist in School Psychology, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9442). The rule will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rule, and seeks to clarify the requirements for licensure.

A general comment was received regarding the adoption of the new rule.

Comment

The Board received a comment expressing concerns that subsection (c)(1) of the proposed rule was in direct conflict with subsection (c)(2) in that (c)(1) requires only a minimum of 1 hour of face-to-face supervision, whereas (c)(2) requires a minimum of 2 hours of face-to-face supervision.

Response

The Board does not find that any such conflict exists. Subsection (c)(1) is simply a restatement of the current law, but will be superseded by subsection (c)(2) on September 1, 2017 pursuant to subsection (c)(3). The Board believes the most prudent approach is to allow for a reasonable period of transition, thus giving licensees and training programs time to adapt their standards and practices.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.9. Licensed Specialist in School Psychology.

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree;

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a Nationally Certified School Psychologist (NCSP); or documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA); and

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service; and

(3) Reference letters from three different individuals licensed as psychologists or specialists in school psychology, or credentialed in school psychology in their respective jurisdictions.

(b) Training Qualifications.

(1) Applicants for licensure as a specialist in school psychology who hold a valid NCSP certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship requirements of this rule.

(2) Applicants for licensure who do not hold a valid NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited academic institution. Applicants applying under this paragraph must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited academic institution. A maximum of 12 internship hours may be counted toward the 60 hour requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology. Applicants applying under this paragraph must submit evidence of graduate level coursework as follows:

(A) Psychological Foundations, including:

(i) biological bases of behavior;

(ii) human learning;

(iii) social bases of behavior;

(iv) multi-cultural bases of behavior;

(v) child or adolescent development;

(vi) psychopathology or exceptionalities;

(B) Research and Statistics;

(C) Educational Foundations, including any of the following:

(i) instructional design;

(ii) organization and operation of schools;

(iii) classroom management; or

(iv) educational administration;

(D) Assessment, including:

(i) psychoeducational assessment;

(ii) socio-emotional, including behavioral and cultural, assessment;

(E) Interventions, including:

(i) counseling;

(ii) behavior management;

(iii) consultation;

(F) Professional, Legal and Ethical Issues; and

(G) A Practicum.

(c) Completion of internship.

(1) Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with Board rule §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must

be supervised by an individual qualified in accordance with Board rule §465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(2) Applicants must have completed an internship with a minimum of 1200 hours. The internship must also meet the following criteria:

(A) At least 600 of the internship hours must have been completed in a public school.

(B) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Board rule §463.11(d)(1) and (d)(2)(C) of this title.

(C) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(D) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(E) Unless authorized by the Board, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(F) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(G) Internship hours must be obtained in not less than one or more than two academic years.

(H) An individual completing an internship under this rule must be designated as an intern.

(I) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(J) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(3) Paragraph (2) of this subsection, along with all of its subparts, shall take effect, supersede, and take the place of paragraph (1) of this subsection on September 1, 2017.

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2) - (9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination and obtain at least the current cut-off score for the NCSP certification before applying for licensure as a specialist in school psychology. Following approval to sit for Board exams, an applicant must take and pass the Jurisprudence Examination within the time required by Board rule §463.19.

(f) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Board's Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Board's Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Board upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(g) Provision of psychological services in the public schools by unlicensed individuals. An unlicensed individual may provide psychological services under supervision in the public schools if:

(1) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(2) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Board that has not been denied, returned, or gone void under Board rule §463.2 of this title (relating to Application Process; or

(3) the individual has been issued a trainee status letter.

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

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.10, Provisionally Licensed Psychologists. The

repeal is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9444). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists adopts new rule §463.10, Provisionally Licensed Psychologists. The rule is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9445). The rule will not be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervision into a more intuitive format. The adopted new rule sets forth the same requirements for licensure as the current rule, and will allow applicants to begin the application process up to 60 days prior to receiving their degree. The adopted new rule also establishes the status of provisional trainee for those applicants who have not yet passed the EPPP or Jurisprudence Examination, but who wish to begin acquiring the supervised experience needed for full licensure.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts the repeal of §463.11, Licensed Psychologist. The repeal is adopted without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9446). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts new rule §463.11, Licensed Psychologist. The rule is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9447) and will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing supervi-

sion into a more intuitive format. The adopted new rule requires applicants to complete a formal internship as part of their doctoral program, complete a total of 3,500 hours of supervised experience, and expands the number of formal internship programs specifically recognized by rule. The adopted new rule also requires the post-doctoral supervised experience be obtained as a provisional trainee or provisionally licensed psychologist, and clearly identifies the time frames for obtaining supervised experience. Lastly, the adopted new rule simplifies and clarifies the procedure for addressing gaps in an applicant's supervised experience.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.11. Licensed Psychologist.

(a) Application Requirements. Application for licensure as a psychologist may be made upon passage of, or exemption from the Oral Examination. An application for licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5(1) of this title (relating to Application File Requirements):

(1) Documentation of current licensure as a provisionally licensed psychologist in good standing.

(2) Documentation indicating passage of or exemption from the Board's Oral Examination.

(3) Documentation of supervised experience from a licensed psychologist which satisfies the requirements of the Board. The formal internship must be documented by the Director of Internship Training.

(4) Documentation of licensure in other jurisdictions, including information on disciplinary action and pending complaints, sent directly to the Board.

(b) Degree Requirements. The degree requirements for licensure as a psychologist are the same as for provisional licensure as stated in Board rule §463.10 of this title (relating to Provisionally Licensed Psychologist).

(c) Supervised Experience. In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred or completed, whichever is earliest, as shown on the official transcript, and at least one year of which must have been a formal internship. The formal internship year may be met either before or after the doctoral degree is conferred or completed. Supervised experience must be obtained in a minimum of two, and no more than three, calendar years.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Experience may be obtained only in either a full-time or half-time setting.

(B) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements.

(C) A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements.

(D) A year of full-time experience may be acquired through a combination of half-time and full-time employment/experience provided that the equivalent of a full-time year of supervision experience is satisfied.

(E) One calendar year from the beginning of ten consecutive months of employment/experience in an academic setting constitutes one year of experience.

(F) When supervised experience is interrupted, the Board may waive upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months. Any consecutive experience obtained before or after the gap must be at least six months unless the supervisor remains the same. Waivers for such gaps are rarely approved and must be requested in writing and include sufficient documentation to permit verification of the circumstances supporting the request. No waiver will be granted unless the Board finds that the supervised experience for which the waiver is sought was adequate and appropriate. Good cause is defined as:

(i) unanticipated discontinuance of the supervision setting,

(ii) maternity or paternity leave of supervisee,

(iii) relocation of spouse or spousal equivalent,

(iv) serious illness of the supervisee, or serious illness in supervisee's immediate family.

(G) A rotating internship organized within a doctoral program is considered to be one placement.

(H) The experience requirement must be obtained after official enrollment in a doctoral program.

(I) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(J) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(K) No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered.

(L) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(M) Experience received from a psychologist while the psychologist is practicing subject to an Agreed Board Order or Board Order shall not, under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it was received. Psychologists who become subject to an Agreed Board Order or Board Order shall inform all supervisees of the Agreed Board Order or Board Order and assist all supervisees in finding appropriate alternate supervision.

(N) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a provisionally licensed psychologist or a licensed psychological associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a licensed specialist in school psychology may use his or her title so long as the supervised experience takes

place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologists and specialist in school psychology. Use of a different job title is permitted only if the supervisee is providing services for a government facility or other facility exempted under §501.004 of the Act (Applicability) and the supervisee is using a title assigned by that facility.

(O) The supervisee and supervisor must clearly inform those receiving psychological services as to the supervisory status of the individual and how the patient or client may contact the supervising licensed psychologist directly.

(2) Formal Internship. At least one year of experience must be satisfied by one of the following types of formal internship:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact (minimum 375 hours).

(vii) The internship must include a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also be at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement and must complete two full years of supervised experience, at least one of which must be received after the doctoral degree is conferred and both of which must meet the requirements of paragraph (1) of this subsection. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which he or she does not have sufficient training and experience, of which a formal internship year is considered to be an integral requirement.

(d) Supervised Experience. In order to qualify for licensure, an applicant must submit proof of a minimum of 3,500 hours of supervised experience, at least 1,750 of which must have been received after obtaining either provisional trainee status or provisional licensure, and at least 1,750 of which must have been obtained through a formal internship that occurred prior to conferral of the doctoral degree. Following the conferral of a doctoral degree, 1,750 hours obtained while employed in the delivery of psychological services in an exempt facility or in another jurisdiction, under the supervision of a licensed psychologist, may be substituted for the minimum of 1,750 hours of supervised experience required as a provisional trainee or provisionally licensed psychologist.

(1) General. All supervised experience for licensure as a psychologist, including the formal internship, must meet the following requirements:

(A) Each period of supervised experience must be obtained in not more than two placements, and in not more than 24 consecutive months.

(B) Gaps Related to Supervised Experience.

(i) Unless a waiver is granted by the Board, an application for a psychologist's license will be denied if a gap of more than 2 years exists between:

(I) the date an applicant's doctoral degree was officially conferred and the date the applicant began obtaining their hours of supervised experience under provisional trainee status or provisional licensure; or

(II) the completion date of an applicant's hours of supervised experience acquired as a provisional trainee or provisionally licensed psychologist, and the date of application.

(ii) The Board shall grant a waiver upon a showing of good cause by the applicant. Good cause shall include, but is not limited to:

(I) proof of continued employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Act, during any gap period;

(II) proof of annual professional development, which at a minimum meets the Board's professional development requirements, during any gap period;

(III) proof of enrollment in a course of study in a regionally accredited institution or training facility designed to prepare the individual for the profession of psychology during any gap period; or

(IV) proof of licensure as a psychologist and continued employment in the delivery of psychological services in another jurisdiction.

(C) A formal internship with rotations, or one that is part of a consortium within a doctoral program, is considered to be one placement. A consortium is composed of multiple placements that have entered into a written agreement setting forth the responsibilities and financial commitments of each participating member, for the purpose of offering a well-rounded, unified psychology training program whereby trainees work at multiple sites, but obtain training from one primary site with some experience at or exposure to aspects of the other sites that the primary site does not offer.

(D) The supervised experience required by this rule must be obtained after official enrollment in a doctoral program.

(E) All supervised experience must be received from a psychologist licensed at the time supervision is received.

(F) The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(G) Experience obtained from a psychologist who is related within the second degree of affinity or consanguinity to the supervisee may not be utilized to satisfy the requirements of this rule.

(H) All supervised experience obtained for the purpose of licensure must be conducted in accordance with all applicable Board rules.

(I) Unless authorized by the Board, supervised experience received from a psychologist practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(J) The supervisee shall be designated by a title that clearly indicates a supervisory licensing status such as "intern," "resident," "trainee," or "fellow." An individual who is a Provisionally Licensed Psychologist or a Licensed Psychological Associate may use his or her title so long as those receiving psychological services are clearly informed that the individual is under the supervision of a licensed psychologist. An individual who is a Licensed Specialist in School Psychology may use his or her title so long as the supervised experience takes place within the public schools, and those receiving psychological services are clearly informed that the individual is under the supervision of an individual who is licensed as a psychologist and specialist in school psychology. Use of a different job title is permitted only if authorized under §501.004 of the Psychologists' Licensing Act, or another Board rule.

(2) Formal Internship. The formal internship hours must be satisfied by one of the following types of formal internships:

(A) The successful completion of an internship program accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA), or which is a member of the Association of Psychology Postdoctoral and Internship Centers (APPIC); or

(B) The successful completion of an organized internship meeting all of the following criteria:

(i) It must constitute an organized training program which is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose of the program must be to assure breadth and quality of training.

(ii) The internship agency must have a clearly designated staff psychologist who is responsible for the integrity and quality of the training program and who is actively licensed/certified by the licensing board of the jurisdiction in which the internship takes place and who is present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency must have two or more full-time licensed psychologists on the staff as primary supervisors.

(iv) Internship supervision must be provided by a staff member of the internship agency or by an affiliate of that agency who carries clinical responsibility for the cases being supervised.

(v) The internship must provide training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time must be in direct patient/client contact.

(vii) The internship must include a minimum of two hours per week of regularly scheduled formal, face-to-face individual supervision. There must also be at least four additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training must be post-clerkship, post-practicum and post-externship level.

(ix) The internship agency must have a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship agency must inform prospective interns about the goals and content of the internship, as well as the expectations for quantity and quality of trainee's work, including expected competencies; or

(C) The successful completion of an organized internship program in a school district meeting the following criteria:

(i) The internship experience must be provided at or near the end of the formal training period.

(ii) The internship experience must require a minimum of 35 hours per week over a period of one academic year, or a minimum of 20 hours per week over a period of two consecutive academic years.

(iii) The internship experience must be consistent with a written plan and must meet the specific training objectives of the program.

(iv) The internship experience must occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience must occur in a school setting and must provide a balanced exposure to regular and special educational programs.

(vi) The internship experience must occur under conditions of appropriate supervision. Field-based internship supervisors, for the purpose of the internship that takes place in a school setting, must be licensed as a psychologist and, if a separate credential is required to practice school psychology, must have a valid credential to provide psychology in the public schools. The portion of the internship which appropriately may take place in a non-school setting must be supervised by a psychologist.

(vii) Field-based internship supervisors must be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than twelve interns at any given time.

(viii) Field-based internship supervisors must provide at least two hours per week of direct supervision for each intern. University internship supervisors must maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(ix) The internship site shall inform interns concerning the period of the internship and the training objectives of the program.

(x) The internship experience must be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xi) The internship experience must be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xii) The internship agency must have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiii) The internship agency must have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(3) Industrial/Organizational Requirements. Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from the formal internship requirement but must complete 3,500 hours of supervised experience meeting the requirements of paragraph (1) of this subsection, at least 1,750 of which must have been received as a provisional trainee or provisionally licensed psychologist. Individuals who do not undergo a formal internship pursuant to this paragraph should note that Board rules prohibit a psychologist from practicing in an area in which they do not have sufficient training and experience, of which a formal internship is considered to be an integral requirement.

(4) Licensure Following Retraining.

(A) In order to qualify for licensure after undergoing retraining, an applicant must demonstrate the following:

(i) conferral of a doctoral degree in psychology from a regionally accredited institution of higher education prior to undergoing retraining;

(ii) completion of a formal, accredited post-doctoral retraining program in psychology which included at least 1,750 hours in a formal internship;

(iii) retraining within the two year period preceding the date of application for licensure under this rule, or continuous employment in the delivery of psychological services in an exempt setting as described in §501.004 of the Psychologists' Licensing Act since receiving their doctoral degree; and

(iv) upon completion of the retraining program, at least 1,750 hours of supervised experience after obtaining either provisional trainee status or provisional licensure.

(B) An applicant meeting the requirements of this subsection is considered to have met the requirements for supervised experience under this rule.

(e) Effective Date of Change Regarding Supervised Experience. Subsection (d), along with all of its subparts, shall take effect, supersede, and take the place of subsection (c) on September 1, 2017.

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

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Darrel D. Spinks
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22 TAC §463.30

The Texas State Board of Examiners of Psychologists adopts amendments to §463.30, Licensing for Military Service Members, Veterans and Spouses, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9451). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted is necessary to comply with the changes made to Ch. 55, Occupations Code, by Texas S.B. 1307, 84th Leg., R.S. (2015) and Texas H.B. 3742, 84th Leg., R.S. (2015).

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.30. Licensing for Military Service Members, Veterans and Spouses.

(a) Military Service Members, Veterans and Spouses.

(1) A license may be issued to a military service member, military veteran, or military spouse, as those terms are defined by Chapter 55, Occupations Code, provided that the following documentation is provided to the Board:

(A) if the applicant is a military spouse, proof of marriage to a military service member; and

(B) proof that the applicant holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or

(C) proof that within the five years preceding the application date, the spouse held the license in Texas.

(2) An applicant applying for licensure under paragraph (1) of this subsection must provide documentation from all other jurisdictions in which the applicant is licensed that indicate that the applicant has received no disciplinary action from those jurisdictions regarding a mental health license.

(3) As part of the application process, the Executive Director may waive any prerequisite for obtaining a license under this rule, other than paragraph (1)(B) and (C) of this subsection and the jurisprudence examination, if it is determined that the applicant's education, training, and experience provide reasonable assurance that the applicant has the knowledge and skills necessary for entry-level practice under the license sought. When making this determination, the Executive Director must consult with the Board's Applications Committee and consider the committee's input and recommendations. In the event the Executive Director does not follow a recommendation of the Applications Committee, he or she must submit a written explanation to the Applications Committee explaining why its recommendation was not followed. No waiver may be granted where a military service member or military veteran holds a license issued by another jurisdiction that has been restricted, or where the applicant has an unacceptable criminal history.

(4) Alternative demonstrations of competency to meet the requirements for licensure. The following provisions provide alternative demonstrations of competency to the Board's licensing standards.

(A) Licensed Specialist in School Psychology. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and evidence of the required coursework or National Association of School Psychologists certification, and passage of the National School Psychology Examination. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, 450 internship hours, and passage of the Examination for Professional Practice in Psychology (EPPP) at the Texas cut-off. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: three reference letters, submission of an official transcript, and passage of the EPPP at the Texas cut-off. All other requirements for licensure are still required.

(D) Licensed Psychologist. An applicant who meets the requirements of paragraph (1) of this subsection is considered to have met the following requirements for this type of license: two years of supervised experience. All other requirements for licensure, including the requirements of this paragraph, are still required.

(5) Determination of substantial equivalency for licensing requirements in another state. The applicant must provide to the Board proof that the state in which the applicant is licensed has standards for licensure that are substantially equivalent to the requirements of this Board for the applicable license type:

(A) Licensed Specialist in School Psychology (the license required to provide psychological services in the public schools).

(i) The completion of a training program in school psychology approved/accredited by the American Psychological Association or the National Association of School Psychologists or a master's degree in psychology with specific course work as set forth in Board rule §463.9 of this title (relating to Licensed Specialist in School Psychology); and

(ii) Passage of the National School Psychology Examination.

(B) Licensed Psychological Associate (the graduate level license that requires supervision by a licensed psychologist).

(i) Graduate degree that is primarily psychological in nature and the degree is at least 42 hours with at least 27 hours in psychology courses;

(ii) Passage of the EPPP at the master's level at 55%; and

(iii) A minimum of 450 hours of practicum, internship, or experience in psychology, under the supervision of a licensed psychologist.

(C) Provisionally Licensed Psychologist (the doctoral level license that must be supervised by a licensed psychologist).

(i) Doctoral degree in psychology; and

(ii) Passage of the EPPP at the doctoral level at 70%.

(D) Licensed Psychologist (the doctoral license that is required to practice independently).

(i) Doctoral degree in psychology;

(ii) Passage of the EPPP at the doctoral level of 70%;

(iii) Two years of supervised experience by a licensed psychologist; and

(iv) Passage of an oral examination.

(6) Renewal of License Issued to Military Service Members, Veterans, and Spouses. A license issued pursuant to this rule shall remain active until last day of licensee's birth month following a period of one year from the date of issuance of the license, at which time it will be subject to all renewal requirements.

(b) Applicants with Military Experience.

(1) A military service member or military veteran, as defined by Chapter 55, Occupations Code, shall receive credit toward the following licensing requirements for verified military service, training, or education:

(A) Licensed Specialist in School Psychology. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(B) Licensed Psychological Associate. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters, 450 hours of supervised experience. All other requirements for licensure are still required.

(C) Provisionally Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year, is considered to have met the following requirements for this type of license: three reference letters. All other requirements for licensure are still required.

(D) Licensed Psychologist. A military service member or military veteran who was engaged in or who has been engaged in the delivery of psychological services within the military, for at least one year following conferral of a doctoral degree, is considered to have met the following requirements for this type of license: one year of post-doctoral supervised experience. All other requirements for licensure are still required.

(2) An applicant with an honorable discharge from the United States military either during the application process or within the three year period preceding the date the application is received by the Board, is considered to have met the requirement for one of the three reference letters.

(3) A military service member or military veteran may not receive credit toward licensing requirements due to military service, training, or education if they hold a license issued by another jurisdiction that has been restricted, or they have an unacceptable criminal history.

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

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CHAPTER 465. RULES OF PRACTICE

22 TAC §465.1

The Texas State Board of Examiners of Psychologists adopts amendments to §465.1, Definitions, with changes to the proposed text as published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 569). The rule will be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted seeks to clarify certain definitions relevant to Board rule §465.18, and seeks to clarify that forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Act.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.1. Definitions.

The following terms have the following meanings:

(1) "Client" has the same meaning as "patient."

(2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.

(3) "Forensic psychological services" are services involving courts, legal claims, or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. However, forensic psychological services do not include evaluations, proceedings, or hearings under the Individuals with Disabilities Education Improvement Act (IDEIA).

(4) "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, a federal, state, or local governmental entity, an attorney, or an administrative body including federal and private disability benefits providers to assist in addressing a forensic referral question.

(5) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological

services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(6) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other individual whom the Board has the authority to discipline under these Rules.

(7) "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and a non-professional relationship.

(8) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview. However, a person who is the subject of a forensic evaluation is not considered to be a patient under these rules.

(9) "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(10) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(11) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(12) "Recognized member of the clergy," as used in §501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, §501(c)(3).

(13) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(14) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(15) "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

(16) "Supervision" refers to direct, systematic professional oversight of individuals who provide psychological services under the authority of a supervising licensee, whereby the supervisor has the responsibility and ability to monitor and control the psychological services provided to ensure the patient's or client's best interests are met and that the public is protected. In the context of psychological training and education, "supervision" also refers to the formal provision of systematic education and training for purposes of licensure or competency that serves to assist individuals with gaining experience and developing the skills necessary for licensure or competent practice in a particular practice area. However, the term "supervision" does not apply to the supervision of purely administrative or employment matters.

(17) "Child custody evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.101.

(18) "Adoption evaluation" has the same meaning as assigned by Tex. Fam. Code Ann. §107.151.

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

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Darrel D. Spinks
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22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts the repeal of §465.2, Supervision, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9453). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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22 TAC §465.2

The Texas State Board of Examiners of Psychologists adopts new rule §465.2, Supervision, with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9453). The rule will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted reflects a collaborative effort by the Board and its stakeholders to align the rules governing supervision with generally acknowledged practice standards, and to consolidate the rules governing supervision into a more intuitive format. The adopted new rule also serves to provide greater protection to the public by establishing clarity and guidance in areas such as documentation of supervision, amounts of direct supervision, and the permissible number of supervisees.

General comments were received regarding the adoption of the new rule.

Comment

The comments received from Texas Association of School Psychologists (TASP) were generally supportive of the proposed changes. TASP requested clarification of proposed §465.2(b)(5), and voiced opposition to the following proposed changes: Repeals of supervision requirement for LSSPs during the first year of licensure; Requiring a supervisor's signature on all educational documents completed for students by supervisees; Requiring three years of independent practice experience within the public schools before being eligible to serve as a supervisor and Supervision rules applying to practicum students.

Response

With regard to TASP's request for clarification, it is the Board's intent, by and through the adoption of proposed §465.2(b)(5), to recognize the long-standing practice whereby students and individuals acting under the supervision of a qualified supervisor, provide supervision as part of their education and training. Such activity is already permitted under §501.004 of the Psychologists' Licensing Act, thus the proposed rule merely seeks to recognize this important training component.

With regard to the comments in opposition, the Board declines to withdraw or repeal the proposed changes. The Board is required by Texas Occupations Code Ann. §501.260 to develop and implement rules of practice that comply with nationally recognized standards for the practice of school psychology. The Board believes that the proposed changes help ensure this statutory requirement is met, while also reducing the regulatory complexity and burden on licensees. The Board also believes that requiring three years of independent practice within the public schools will ensure the competency of supervisors, adequacy of supervision, and provide a greater measure of protection for the public than the current rules provide. Lastly, the Board disagrees that the proposed rule changes will apply to practicum students. Nothing in the proposed changes operate to override or detract from the exemptions afforded in Texas Occupations Code Ann. §501.004, nor does the express text of the proposed changes impose any requirements on practicum students. Rather, the proposed changes are directed toward and will only affect those individuals who are subject to the Board's jurisdiction.

Comment

The commenter disagreed with the proposed change requiring three years of independent practice experience within the public schools before being eligible to serve as a supervisor.

Response

The Board declines to repeal the proposed change. The Board is required by Texas Occupations Code Ann. §501.260 to develop and implement rules of practice that comply with nationally recognized standards for the practice of school psychology. The Board believes that the proposed change helps ensure this statutory requirement is met, and also believes that requiring three years of independent practice within the public schools will ensure the competency of supervisors, adequacy of supervision, and provide a greater measure of protection for the public than the current rules provide.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.2. Supervision.

(a) Supervision in General. The following rules apply to all supervisory relationships.

(1) A licensee is responsible for the supervision of all individuals that the licensee employs or utilizes to provide psychological services of any kind.

(2) Licensees ensure that their supervisees have legal authority to provide psychological services.

(3) Licensees delegate only those responsibilities that supervisees may legally and competently perform.

(4) All individuals who receive psychological services requiring informed consent from an individual under supervision must be informed in writing of the supervisory status of the individual and how the patient or client may contact the supervising licensee directly.

(5) All materials relating to the practice of psychology, upon which the supervisee's name or signature appears, must indicate the supervisory status of the supervisee. Supervisory status must be indicated by one of the following:

(A) Supervised by (name of supervising licensee);

(B) Under the supervision of (name of supervising licensee);

(C) The following persons are under the supervision of (name of supervising licensee); or

(D) Supervisee of (name of supervising licensee).

(6) Licensees provide an adequate level of supervision to all individuals under their supervision according to accepted professional standards given the experience, skill and training of the supervisee, the availability of other qualified licensees for consultation, and the type of psychological services being provided.

(7) Licensees utilize methods of supervision that enable the licensee to monitor all delegated services for legal, competent, and ethical performance. Methods of supervision may include remote or electronic means if:

(A) adequate supervision can be provided through remote or electronic means;

(B) the difficulties in providing full-time in-person supervision place an unreasonable burden on the delivery of psychological services; and

(C) no more than fifty percent of the supervision takes place through remote or electronic means.

(8) Licensees must be competent to perform any psychological services being provided under their supervision.

(9) Licensees shall document their supervision activities in writing, including any remote or electronic supervision provided. Documentation shall include the dates, times, and length of supervision.

(10) Licensees may only supervise the number of supervisees for which they can provide adequate supervision.

(b) Supervision of Students, Interns, Residents, Fellows, and Trainees. The following rules apply to all supervisory relationships involving students, interns, residents, fellows, and trainees.

(1) Unlicensed individuals providing psychological services pursuant to §§501.004(a)(2), 501.252(b)(2), or 501.260(b)(3) of the Act must be under the supervision of a qualified supervising licensee at all times.

(2) Supervision must be provided by a qualified supervising licensee before it will be accepted for licensure purposes.

(3) A licensee practicing under a restricted status license is not qualified to, and shall not provide supervision for a person seeking to fulfill internship or practicum requirements, or a person seeking licensure under the Psychologists' Licensing Act, regardless of the setting in which the supervision takes place, unless authorized to do so by the Board. A licensee shall inform all supervisees of any Board order restricting their license and assist the supervisees with finding appropriate alternate supervision.

(4) A supervisor must document in writing their supervisee's performance during a practicum, internship, or period of supervised experience required for licensure. The supervisor must provide this documentation to the supervisee.

(5) An individual subject to this subsection may allow a supervisee, as part of a required practicum, internship, or period of supervised experience required for licensure with this Board, to supervise others in the delivery of psychological services.

(6) For provisional trainees, a supervisor must provide at least one hour of individual supervision per week and may reduce the amount of weekly supervision on a proportional basis for provisional trainees working less than full-time.

(7) Licensees may not supervise an individual to whom they are related within the second degree of affinity or consanguinity.

(c) Supervision of Provisionally Licensed Psychologists and Licensed Psychological Associates. The following rules apply to all supervisory relationships involving Provisionally Licensed Psychologists and Licensed Psychological Associates.

(1) Provisionally Licensed Psychologists and Licensed Psychological Associates must be under the supervision of a Licensed Psychologist and may not engage in independent practice.

(2) A Provisionally Licensed Psychologist who is licensed in another state to independently practice psychology and is in good standing in that state, and who has applied for licensure as a psychologist may during the time that the Board is processing the applicant's application for licensure as a psychologist, practice psychology without supervision. However, upon notification from the Board that an applicant has not met the qualifications for licensure as a psychologist, the provisionally licensed psychologists must obtain supervision within 30 days in order to continue to practice.

(3) A provisionally licensed psychologist may, as part of a period of supervised experience required for full licensure with this Board, supervise others in the delivery of psychological services.

(4) A supervisor must provide at least one hour of individual supervision per week. A supervisor may reduce the amount of weekly supervision on a proportional basis for supervisees working less than full-time.

(d) Supervision of Licensed Specialists in School Psychology interns and trainees. The following rules apply to all supervisory relationships involving Licensed Specialists in School Psychology, as well as all interns and trainees working toward licensure as a specialist in school psychology.

(1) A supervisor must provide an LSSP trainee with at least one hour of supervision per week, with no more than half being group supervision. A supervisor may reduce the amount of weekly supervision on a proportional basis for trainees working less than full-time.

(2) Supervision within the public schools may only be provided by a Licensed Specialist in School Psychology, who has a minimum of three years of experience providing psychological services within the public school system without supervision. To qualify, a licensee must be able to show proof of their license, credential, or authority to provide unsupervised school psychological services in the jurisdiction where those services were provided, along with documentation from the public school(s) evidencing delivery of those services.

(3) Supervisors must sign educational documents completed for students by the supervisee, including student progress reports for which the supervisee is providing psychological or counseling services, student evaluation reports, or similar professional reports to consumers, other professionals, or other audiences. It is not a violation of this rule if supervisors do not sign documents completed by a committee reflecting the deliberations of an educational meeting for an individual student which the supervisee attended and participated in as part of the legal proceedings required by federal and state education laws, unless the supervisor also attended and participated in such meeting.

(4) Supervisors shall document all supervision sessions. This documentation must include information about the duration of sessions, as well as the focus of discussion or training. The documentation must also include information regarding:

(A) any contracts or service agreements between the public school district and university school psychology training program;

(B) any contracts or service agreements between the public school district and the supervisee;

(C) the supervisee's professional liability insurance coverage, if any;

(D) any training logs required by the school psychology training program; and

(E) the supervisee's trainee or licensure status.

(5) Supervisors must ensure that each individual completing any portion of the internship required by Board rule §463.9, is provided with a written agreement that includes a clear statement of the expectations, duties, and responsibilities of each party, including the total hours to be performed by the intern, benefits and support to be provided by the supervisor, and the process by which the intern will be supervised and evaluated.

(6) Supervisors must ensure that supervisees have access to a process for addressing serious concerns regarding a supervisee's performance. The process must protect the rights of clients to receive quality services, assure adequate feedback and opportunities for improvement to the supervisee, and ensure due process protection in cases of possible termination of the supervisory relationship.

(e) The various parts of this rule should be construed, if possible, so that effect is given to each part. However, where a general provision conflicts with a more specific provision, the specific provision shall control.

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

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22 TAC §465.3

The Texas State Board of Examiners of Psychologists adopts amendments to §465.3, Providers of Psychological Services, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9455). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will prevent duplicate provisions, and assist with the consolidation and clarification of rules related to supervision under Board rule §465.2.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601500
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 19, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700

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22 TAC §465.6

The Texas State Board of Examiners of Psychologists adopts amendments to §465.6, Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9455). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will prevent duplicate provisions, and assist with the consolidation and clarification of rules related to supervision under Board rule §465.2.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts the repeal of §465.38, Psychological Services for Public Schools, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9456). The rule will not be republished.

The repeal is being adopted to ensure the protection and safety of the public.

The repeal as adopted is necessary due to the extensive changes proposed for this rule.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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TRD-201601491

Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 20, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700

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22 TAC §465.38

The Texas State Board of Examiners of Psychologists adopts new rule §465.38, Psychological Services for Public Schools. The rule is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9457) and will be republished.

The new rule is being adopted to ensure the protection and safety of the public.

The new rule as adopted is intended to replace the current version of the rule and reflects a collaborative effort by the Board and its stakeholders to consolidate the rules governing licensure and supervision into a more intuitive format. The adopted new rule also reflects a more singular focus toward the practice standards applicable to LSSPs, rather than commingling those standards with licensing and supervision requirements.

General Comments were received regarding the adoption of the new rule.

Comment

The comment received from Disability Rights of Texas is generally supportive of the proposed changes.

Response

While the Board generally agrees with this comment, the Board would note that it is federal law that requires school districts to get informed consent, not the LSSPs.

Comment

The commenter suggested deleting the term "public" from the phrase "Texas public schools" in subsection (c), thus enabling LSSPs to practice in private schools.

Response

The Board declines to propose such a change because such a change would exceed the scope of the Rules Advisory Committee's recommendations and the focus of this set of revisions. Any requests for such changes should be made in accordance with Board rule §461.19.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.38. Psychological Services for Public Schools.

(a) This rule acknowledges the unique difference in the delivery of school psychological services in the public schools from psychological services in the private sector. The Board recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of public school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in the public schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) A Licensed Specialist in School Psychology (LSSP) means a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, for educational purposes, using psychological techniques and procedures is considered the practice of psychology.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in Texas public schools, including charter schools. A person utilizing this license may not provide psychological services in any context or capacity outside of their employment or contract with public schools.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychology or LSSP. Only individuals who meet the requirements of Board rule §465.6 of this title (relating to Listings, Public Statements and Advertisements, Solicitations, and Specialty Titles) may refer to themselves as School Psychologists. No individual may use the title Licensed School Psychologist. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Board to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs;

(B) Those individuals listed in Board rule §463.9(g) of this title (relating to Licensed Specialist in School Psychologists); and

(C) Individuals seeking to fulfill the licensing requirements of Board rule §463.8 of this title (relating to Licensed Psychological Associate), Board rule §463.10 of this title (relating to Provisionally Licensed Psychologists), or Board rule §463.11 of this title (relating to Licensed Psychologist).

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy. Such contracting must be on a short term or part-time basis, and shall not involve the broad range of school psychological services listed in subsection (b)(1) of this rule.

(3) An LSSP who contracts with a school district to provide school psychological services may not subcontract services which they have been contracted to provide.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232q;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq;

(4) Texas Public Information Act ("Open Records Act"), Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973.

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101.

(g) Informed Consent. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Board rules, is necessary. Licensees providing psychological services under subsection (e)(2) however, must obtain informed consent as otherwise required by the Board rules.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601515
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 20, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.11

The Texas State Board of Examiners of Psychologists adopts amendments to §469.11, Legal Actions Reported and Reciprocal Discipline, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9458). The rule will not be republished.

The amendment is being adopted to ensure the protection and safety of the public.

The amendment as adopted will clarify reporting requirements and help to ensure that Board resources are not wasted by reviewing arrests which never result in any formal charges being filed or any final disposition being entered. Such an adopted amendment will also help ensure that the privacy of licensees is protected. Lastly, the adopted amendment will clarify reporting requirements for administrative actions, and expand the duty to report such actions to include federal investigations and agreements related to Medicare and Medicaid fraud.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

Filed with the Office of the Secretary of State on March 30, 2016.

TRD-201601502
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: April 19, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 305-7700

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS
SUBCHAPTER E. PURCHASING

31 TAC §3.51

The General Land Office (GLO) adopts new §3.51, relating to Enhanced Contract Monitoring, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1080). The text will not be republished.

INTRODUCTION AND BACKGROUND

The adopted provisions will establish a new rule for enhanced contract monitoring. This new rule has been undertaken as a result of the passage of Senate Bill (S.B.) 20 during the 84th Texas Legislature, which amended portions of Chapter 2261 of the Texas Government Code (TGC).

S.B. 20 modifies Chapter 2261 of the TGC to require state agencies to establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

The adopted rule will set forth the agency's procedure to meet S.B. 20's requirement to conduct enhanced monitoring of contracts, the factors that are to be considered, the requirement of establishing procedures to administer the monitoring, and the requirement of reports being delivered to the agency's governing body.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the new rule.

STATUTORY AUTHORITY

The new rule is adopted under of the Texas Government Code §2261.253, which requires state agencies to establish, in agency rule, a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the governing body of the agency.

STATUTES AFFECTED

Chapter 2261 of the Texas Government Code is affected by the adoption.

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

Filed with the Office of the Secretary of State on April 4, 2016.

TRD-201601558
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: April 24, 2016
Proposal publication date: February 12, 2016
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.353

The Comptroller of Public Accounts adopts new §3.353, concerning sales tax holiday--certain emergency preparation supplies, with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1345). This section implements Senate Bill 904, 84th Legislature, 2015, which enacted Tax Code, §151.3565. Effective September 1, 2015, Tax Code, §151.3565 exempts from the sales and use tax the sale of certain emergency preparation supplies during the last weekend of April.

Subsection (a) contains definitions. Paragraph (1) defines the term "emergency preparation item." This definition is taken from Tax Code, §151.3565(b). Paragraph (2) defines the term "exemption period." This definition is taken from Tax Code, §151.3565(a). Paragraphs (3) and (4) define the terms "layaway sales" and "rain check," respectively. Both definitions are taken from §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products).

The comptroller received written comments from Jim Sheer representing the Texas Retailers Association. The comments expressed concern that the term "emergency or rescue ladder," which appears in subsection (a)(1)(C), is unclear. This term is commonly understood to mean a collapsible or chain ladder designed to hang from a window sill. Language is added in subsection (a)(1)(C) to give an example of a collapsible or chain ladder designed to hang from a window sill.

Subsection (b) addresses exempt sales. Much of this subsection is derived from §3.365 of this title (relating to Sales Tax Holiday--Clothing, Shoes, and School Supplies) and §3.369 of this title (relating to Sales Tax Holiday--Certain Energy Star Products) for consistency. Paragraph (1) states sales tax is not due on the sale of eligible items during the exemption period. Paragraph (2) provides there is no limit on the number of eligible items that may be purchased during the exemption period. Paragraph (3) provides for the purchase of multiple exempt items. Paragraph (4) addresses how the exemption applies to the rental or lease of eligible items.

Subsection (c) identifies those items which are not eligible for the exemption set out in Tax Code, §151.3565. This subsection is derived from Tax Code, §151.3565(b) and from similar provisions in §3.365 and §3.369 of this title.

The comptroller also received written comments from Mr. Sheer requesting clarification on the taxability of charges for warranty plans associated with exempt purchases. Subsection (c)(6) of this section provides that services performed on or related to emergency preparation items are not exempt. The sale of a warranty plan is taxable. See §3.292 of this title (Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property). Language is added in subsection (c)(6) to address the taxability of warranty plans.

Subsection (d) addresses the application of the exemption to pre-packaged items which contain both exempt and non-exempt items. This subsection is derived from §3.369 of this title.

Subsection (e) addresses whether an item described in subsection (a)(1) satisfies the definition of an emergency supply item based upon the total sales price of the item, including delivery or shipping and handling charges, discounts, coupons, promotions, and rebates. This subsection is derived from similar provisions in §3.365 and §3.369 of this title. Paragraph (1) explains how delivery or shipping and handling charges affect the total sales price of an item. Paragraph (2) addresses how discounts offered by the seller affect the total sales price of an item. Paragraph (3) addresses how coupons affect the total sales price of an item. Paragraph (4) addresses how buy one, get one free or reduced price promotions affect the total sales price of an item. Paragraph (5) provides that rebates do not affect the total sales price of an item for purposes of the exemption.

The comptroller received additional written comments from Mr. Sheer expressing concern that the treatment of delivery charges in the section does not reflect the industry practice of separately charging for delivery. The definition of sales price from Tax Code, §151.007 includes delivery fees. Subsection (e)(1) includes delivery charges in the sales price, regardless of whether the charges are separately stated. Based on the statutory provision, the comptroller declines to make any changes.

In addition, the comptroller received written comments from Doug Duffie, CPA. The comments expressed concern that the language on rebates in subsection (e)(5) does not match prior comptroller policy. Sales tax holidays present unique circumstances, including the 72-hour exemption duration and the inclusion or exclusion of certain items based on total sales price. Subsection (e)(5) is amended to clarify that rebates that occur after the exemption period are not considered in determining qualification under this section.

Subsection (f) addresses the application of the exemption with respect to purchases made via lay-away and means other than in person. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (g) addresses the application of the exemption with respect to purchases made by use of a rain check. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (h) addresses the exchange of items purchased tax-free pursuant to this section. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

Subsection (i) addresses returns of items purchased tax-free pursuant to this section after the exemption period has ended. This subsection is derived from similar provisions in §3.365 and §3.369 of this title. Paragraph (1) identifies the 30-day period following an exemption period. Paragraph (2) explains that the 30-day period set out in subsection (i) is for sales and use tax purposes only and is not intended to change a seller's policy regarding returned items.

Subsection (j) addresses the documentation required to be maintained by a seller of emergency preparation supplies during an exemption period. This subsection is derived from similar provisions in §3.365 and §3.369 of this title.

The new section is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2, and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The new section implements Tax Code, §151.3565 (Emergency Preparation Supplies for Limited Period).

§3.353. Sales Tax Holiday--Certain Emergency Preparation Supplies.

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

(1) Emergency preparation item--

(A) A portable generator used to provide light or communications or to preserve perishable food in the event of a power outage, the sales price of which is less than $3,000;

(B) a storm protection device manufactured, rated, and marketed specifically to prevent damage to a glazed or non-glazed opening during a storm, the sales price of which is less than $300;

(C) an emergency or rescue ladder, such as a collapsible or chain ladder designed to hang from a window sill, the sales price of which is less than $300; or

(D) an item listed in this subparagraph, the sales price of which is less than $75:

(i) a reusable or artificial ice product;

(ii) a portable, self-powered light source;

(iii) a gasoline or diesel fuel container;

(iv) a AAA cell, AA cell, C cell, D cell, 6 volt, or 9 volt battery, or a package containing more than one battery, other than an automobile or boat battery;

(v) a nonelectric cooler or ice chest for food storage;

(vi) a tarpaulin or other flexible waterproof sheeting;

(vii) a ground anchor system or tie-down kit;

(viii) a mobile telephone battery or battery charger;

(ix) a portable self-powered radio, including a two-way radio or weatherband radio;

(x) a fire extinguisher, smoke detector, or carbon monoxide detector;

(xi) a hatchet or axe;

(xii) a self-contained first aid kit; or

(xiii) a nonelectric can opener.

(2) Exemption period--The period beginning at 12:01 a.m. on the Saturday before the last Monday in April and ending at 12 midnight on the last Monday in April.

(3) Layaway sales--A transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the merchandise.

(4) Rain check--A document assuring that a person can take advantage of a sale or special offer made by a seller at a later time if the item offered is not available.

(b) Exempt sales.

(1) Sales or use tax is not due on the sale of an emergency preparation item during the exemption period.

(2) Any person can purchase emergency preparation items tax-free during the exemption period. There is no limit to the number of emergency preparation items one person can purchase tax-free during the exemption period. An exemption or resale certificate is not required to purchase an emergency preparation item tax-free during the exemption period.

(3) The exemption applies to each emergency preparation item sold during the exemption period, regardless of how many emergency preparation items are sold on the same invoice. For example, a person can purchase two generators with a sales price of $2,500 each, even though the total price on the invoice exceeds $3,000.

(4) Emergency preparation items may be rented or leased tax-free, including under a "rent to own" contract, if the rental or lease contract is executed during the exemption period. Extensions or renewals of rental or lease contracts do not qualify for the exemption unless executed during the exemption period.

(c) Taxable sales. The exemption under this section does not apply to:

(1) tangible personal property that is not an emergency preparation item, as that term is defined in subsection (a)(1) of this section, for example, camp stoves, camping supplies, chainsaws, extension ladders, step-ladders, plywood, tents, or automobile or boat batteries;

(2) a portable generator with a sales price of $3,000 or more;

(3) a storm protection device or emergency or rescue ladder with a sales price of $300 or more;

(4) any item listed in subsection (a)(1)(D) of this section with a sales price of $75 or more;

(5) repair or replacement parts for an emergency preparation item that do not otherwise qualify for exemption; or

(6) services performed on or related to emergency preparation items as well as warranty plans and extended protection plans. For example, repair services for an eligible portable generator are taxable as the repair of tangible personal property. See §3.292 of this title (relating to Repair, Remodeling, Maintenance, and Restoration of Tangible Personal Property) for more information.

(d) Sales of pre-packaged combinations containing both exempt and taxable items.

(1) When an emergency preparation item is sold together in a pre-packaged combination with an item that is not eligible for the exemption described in subsection (b) of this section, the full price of the pre-packaged combination is subject to sales tax, unless the price of the emergency preparation item is separately stated. For example, a portable generator and a portable cooking device sold as a set for a single price is taxable regardless of the price of the generator or the package. A separately-stated charge for the portable generator is eligible for the sales tax exemption during the exemption period if the sales price of the portable generator is less than $3,000.

(2) When an emergency preparation item is sold in a pre-packaged combination that contains as a free gift an item that is not eligible for the exemption described in subsection (b) of this section, the emergency preparation item may qualify for the exemption under this section if the price of the set is the same as the price of the emergency preparation item sold separately. For example, a portable generator with a sales price of less than $3,000 may be sold in a package with a free extension cord. If the price of the set is the same as the price of the portable generator sold separately, the product that is being sold is the portable generator, which is exempt from tax if sold during the exemption period. See §3.301 of this title (relating to Promotional Plans, Coupons, Retailer Reimbursement) for additional information on the seller's tax responsibility for the free item.

(e) Sales price. Whether an item described in subsection (a)(1) of this section satisfies the definition of an emergency supply item, and can be purchased tax-free during the exemption period, depends upon the sales price of the item.

(1) Delivery or shipping and handling charges. Delivery or shipping and handling charges are included as part of the total sales price of an item of tangible personal property, regardless of whether the charges are separately stated.

(A) The addition of delivery or shipping and handling charges to the price of an item may result in the item no longer qualifying as an emergency preparation item. For example, a portable generator with a sales price of $2,999 is eligible for the exemption during the exemption period. A generator that sells for $2,999 and is delivered for a charge of $25, for a total sales price of $3,024, does not qualify as an emergency preparation item and sales tax is due on the total sales price of $3,024, even if the sale occurs during the exemption period.

(B) Delivery or shipping and handling charges which are part of the sales price of an exempt item are exempt so long as the total charge does not exceed the limits set forth in this exemption. For example, a portable generator with a sales price of $1,999 and delivery charge of $50, for a total sales price of $2,049, is eligible for the exemption during the exemption period. The total sales price of $2,049, is exempt.

(2) Discounts. A seller may offer discounts to reduce the sales price of an item described in subsection (a)(1) of this section in order to qualify the item as an emergency preparation item. When a discount is given during the exemption period to reduce the sales price of an item described in subsection (a)(1) of this section, the item can qualify as an emergency preparation item based on the reduced sales price.

(3) Coupons. When sellers accept a coupon as a part of the sales price of any item of tangible personal property, the value of the coupon is excluded from the sales price as a cash discount, regardless of whether the seller is reimbursed for the amount that the coupon represents. When a coupon is used during the exemption period to reduce the sales price of an item described in subsection (a)(1) of this section, the item can qualify as an emergency preparation item based on the reduced sales price.

(4) Buy one, get one free or for a reduced price. The total price of an item that is advertised as "buy one, get one free," or "buy one, get one for a reduced price," cannot be averaged across two items in order for both to qualify for the exemption under this section as emergency preparation items. For example, an emergency rescue ladder with a sales price of $400 that is advertised as buy one, get one free does not qualify as an emergency preparation item based on the sales price even though the purchaser is receiving two emergency rescue ladders and the average sales price of each would be $200.

(5) Rebates. Rebates that are paid to a purchaser after the exemption period do not affect the sales price of an item purchased for purposes of determining whether an item qualifies for exemption under this section. The full amount of the sales price, before the rebate, is used to determine whether an item meets the definition of an emergency preparation item.

(f) Layaway sales and purchases by means other than in person.

(1) The sale of an emergency preparation item under a layaway plan or purchased by mail, telephone, email, Internet, custom order, or any other means other than in person qualifies for exemption when either:

(A) the purchaser places on layaway the emergency preparation item during the exemption period and the seller accepts the order for immediate delivery upon full payment, even if delivery is made after the exemption period;

(B) the purchaser places the order and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period; or

(C) final payment on the layaway order is made by, and the merchandise is given to, the purchaser during the exemption period.

(2) For purposes of this subsection, the seller accepts an order when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an "in date" stamp on a mail order, or assignment of an "order number" to a telephone order. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

(g) Rain checks. Emergency preparation items purchased during the exemption period with use of a rain check qualify for the exemption regardless of when the rain check was issued. The issuance of a rain check during the exemption period will not qualify an emergency preparation item for the exemption if the item is purchased after the exemption period.

(h) Exchanges.

(1) Tax is not due on an emergency preparation item purchased during the exemption period but exchanged, after the exemption period ends, for an emergency preparation item of equal or lesser value.

(2) Tax is due on the difference in sales price of an emergency preparation item purchased during the exemption period but exchanged, after the exemption period ends, for another emergency preparation item of greater value that would qualify for exemption if purchased during the exemption period.

(i) Returned merchandise. For a 30-day period after the temporary exemption period, when a customer returns an emergency preparation item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item.

(1) This 30-day period begins the Tuesday immediately following the end of the exemption period and ends 30 calendar days later with no exclusions for weekend days or holidays.

(2) This 30-day period is set solely for the purpose of designating a time period during which the purchaser must provide documentation that shows that sales tax was paid on returned merchandise. The 30-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

(j) Documenting exempt sales. A seller is not required to obtain an exemption certificate on sales of eligible items during the exemption period; however, the seller's records should clearly identify the type of item sold, the date on which the item was sold, and the sales price of each exempt item sold.

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

Filed with the Office of the Secretary of State on April 1, 2016.

TRD-201601539
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: April 21, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 178. TEXAS STATE VETERANS CEMETERIES

40 TAC §178.6

The Texas Veterans Land Board (VLB) adopts an amendment to §178.6, relating to Texas State Veterans Cemeteries. The rule is adopted without changes to the proposed text as published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1219) and will not be republished.

Introduction and Background

The adopted amendment will remove language related to fees for the interment of eligible relatives of veterans.

Section 164.005 of the Texas Natural Resources Code authorizes the VLB to operate or enter into agreements with third parties for the operation of veterans cemeteries. The Veterans Land Board works in conjunction with the United States Department of Veterans Affairs on the construction of the cemeteries. The adopted amendment will clarify the operation of the cemeteries, particularly the fees associated with the burials of eligible relatives of veterans.

The adopted amendment to §178.6 eliminates the fees for the interment of eligible relatives of veterans. The VLB shall approve all fees, expenses, and charges for the interment, disinterment, and related services for the Texas State Veterans cemeteries as described in adopted §178.6 relating to Fees.

COMMENTS BY THE PUBLIC

The GLO did not receive any comments on the amendments.

STATUTORY AUTHORITY

Amendments to §178.6 are adopted under Texas Natural Resources Code §164.004, which provides the VLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 164.019, Texas Natural Resources Code.

STATUTES AFFECTED

Texas Natural Resources Code Chapter 164, §§164.001 - 164.019 are affected by this adoption.

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

Filed with the Office of the Secretary of State on April 1, 2016.

TRD-201601541
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner, General Land Office
Texas Veterans Land Board
Effective date: April 21, 2016
Proposal publication date: February 19, 2016
For further information, please call: (512) 475-1859

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER G. HIGHWAY IMPROVEMENT CONTRACT SANCTIONS

43 TAC §§9.102, 9.107, 9.111, 9.113, 9.114

The Texas Department of Transportation (department) adopts amendments to §§9.102, 9.107, 9.111, 9.113, and 9.114, concerning Highway Improvement Contract Sanctions. The amendments to §9.107 are adopted with changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1106). The amendments to §§9.102, 9.111, 9.113, and 9.114 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The legislature and department policy have declared that it is the department's duty to: (1) promote the health, safety, welfare, convenience, and enjoyment of the traveling public; and (2) protect the public investment in the interstate and primary systems.

By statute, the department awards highway improvement contracts to the lowest qualified bidder (Transportation Code, §223.0041). Contractors that acquire work and then do not advance the work in a timely manner negatively impact the traveling public and business along the construction corridor. There are many reasons that contribute to contractors' schedules not being met; some of these reasons are outside of the

contractor's control. The amendments provided under these rules allow the department to take action against a contractor whose schedules are not being met due to factors that are under its control. These rules are not applicable to projects awarded prior to its effective date.

Amendments to §9.102, Definitions, delete the definition of "affiliated entity" because the definition has proven too vague to be helpful in imposing sanctions on affiliates. The amendments re-designate the paragraphs of this section accordingly. A new substantive provision for determining affiliated entities for the purposes of Chapter 9, Subchapter G, is added in §9.113.

Amendments to §9.107, Grounds for Sanctions, add a new ground for which sanctions may be imposed. Under the new provision, a sanction may be imposed if the department determines, using the criteria specified in the provision, that a contractor fails to timely complete a project.

Amendments to §9.111, Application of Sanction, add to the chart in Figure: 43 TAC §9.111(c) the descriptions of various sanctions that may be imposed by the executive director for a contractor's failure to timely complete projects under contract, as determined under §9.107(b).

Amendments to §9.113, Indirect Sanction on an Affiliated Entity, add a new provision to be used to determine if entities are affiliated for the purposes of Chapter 9, Subchapter G. To ensure conformity between Subchapters B and G of Chapter 9, the new provision refers to the criteria provided under 43 TAC §9.12(d) for determining the affiliation of two or more entities. The provision is added at the beginning of the section, as new subsection (a); the existing subsections are re-designated accordingly, with an amendment to a cross reference to reflect the re-designation of existing subsection (c).

Amendments to §9.114, Lessening or Removal of Sanction, change a reference to a subsection in §9.113 from §9.113(b) to §9.113(c) to reflect the re-designation of subsections within that section, as described above.

COMMENTS

The department received a comment from an individual supporting the adoption of the amendments to the rules. The department also received a comment that suggested changes to §9.107(b).

Comment: The Associated General Contractors of Texas commented that the rule should expressly allow the relevant contractor to comment on a preliminary determination by the district and any mitigation efforts undertaken by the contractor to alleviate any damage caused by failing to timely complete a project. They also suggested that the Chief Engineer approve the final judgment of the District Engineer before any sanction is considered. Finally, they understood that "debarment is automatically invoked when the rule criteria is met."

Response: The department concurs in part with those comments. In response to the comment, the department has amended proposed §9.107(b) to provide that as a condition for imposing a sanction for failure to timely complete projects under contract a preliminary determination must be sent to the contractor in question after which the contractor is provided the opportunity to respond and to point out any mitigating factors.

However, the department does not agree that the rule should expressly require that the chief engineer approve the final judgment of the district engineer before any sanction is considered because that provision is to be used only to determine if a contractor fails to timely complete a project and therefore, whether contractor conduct may warrant sanction by the executive director. The chief engineer is already part of the sanction review process that makes recommendations to the executive director when a putative violation of §9.107(b) is an issue. Finally, the commenter is incorrect that the new rules automatically recommend debarment; §9.111, as amended, recommends a limit on the contract amount as a sanction, although other sanctions or a suspension may also be considered and imposed by the executive director, as appropriate.

STATUTORY AUTHORITY

The amendments are adopted 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

None.

§9.107. Grounds for Sanction.

(a) Sanctions may be imposed under this section for:

(1) failure to execute a highway improvement contract after a bid is awarded, unless the contractor honors a bid guaranty submitted under §9.14(d) of this chapter (relating to Submittal of Bid);

(2) the rejection by the commission of two or more bids by the contractor during the 36-month period preceding the month in which the determination is being made because of contractor error;

(3) the department's declaration of a contractor in default on a highway improvement contract;

(4) violation of §10.101 of this title (relating to Required Conduct); or

(5) failure to timely complete projects under contract.

(b) Before a sanction may be imposed for the ground provided in subsection (a)(5) of this section, the district engineer of the district in which the project is located must provide to the contractor a preliminary determination for the sanction using the factors set out in this subsection. The ground provided in subsection (a)(5) is found to exist if the district engineer, after considering any contractor response to the preliminary determination and any mitigating factors, determines that:

(1) the contractor:

(A) has not completed the project within the time allowed under the contract, as adjusted by all applicable change orders; or

(B) has used more than 80 percent of the time allocated for the project, as adjusted by all applicable change orders, and the percent of allocated time used divided by the percent of the contract completed, both as adjusted by all applicable change orders, is greater than 1.2; and

(2) the contractor is more than 10 percent behind on all of its other contracted department projects, as adjusted by all applicable change orders.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601521

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: April 20, 2016
Proposal publication date: February 12, 2016
For further information, please call: (512) 463-8630

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CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) adopts amendments to §§21.31, 21.33, and 21.41 and new §21.57, concerning Utility Accommodation, and amendments to §21.962 and §21.963, concerning Leasing of Right of Way to Saltwater Pipeline Operators. The amendments and new section are adopted without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 100) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

House Bill 497, 84th Legislature, Regular Session, 2015, amended §91.901, Natural Resources Code, to expand the definition of "saltwater pipeline facility" to include saltwater intended to be used in drilling or operating an oil or gas well. The goal of HB 497 is to facilitate the use of state right of way and the construction of saltwater pipelines as a mechanism of transporting saltwater needed for exploration and production to and from drill sites, to disposal and other types of wells. Those statutory changes necessitate changes to 43 TAC Chapter 21, Subchapters C and R.

Amendments to §21.31, Definitions, modify the definition of "saltwater" to include water intended to be used in the exploration of oil or gas. The amendments also add the definition of "temporary pipeline facility."

Amendments to §21.33, Applicability, clarify that a temporary saltwater pipeline facility is exempt from conformance with the provisions for high-pressure pipelines.

Amendments to §21.41, Overhead Electric and Communication Lines, repeal existing Figure: 43 TAC §21.41(c), Horizontal Clearances, and substitute a new Horizontal Clearances table, which updates the existing table to reflect current standards used for the state highway system's right of ways.

New §21.57, Temporary Saltwater Pipeline, authorizes the installation of a temporary saltwater pipeline on highway right of way for a term not to exceed 180 days. The section limits the size of the pipe to 12 inches or less and operation pressure to 60 pounds per inch or less.

Amendments to §21.962, Definitions, modify and expand the definition for "saltwater pipeline facility" to include facilities that conduct saltwater intended to be used in the exploration for or production of oil or gas.

Amendments to §21.963, Lease of Right of Way for a Saltwater Pipeline Facility, add that the lease term for above-ground saltwater facilities may not exceed 180 days.

COMMENTS

No comments concerning the proposed amendments and new section were received.

SUBCHAPTER C. UTILITY ACCOMMODATION

43 TAC §§21.31, 21.33, 21.41, 21.57

STATUTORY AUTHORITY

The amendments and new section are adopted 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, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601522
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: April 20, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 463-8630

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SUBCHAPTER R. LEASING OF RIGHT OF WAY TO SALTWATER PIPELINE OPERATORS

43 TAC §21.962, §21.963

STATUTORY AUTHORITY

The amendments are adopted 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, §202.052 and §202.053, which authorize the department to lease a highway right of way and Natural Resources Code, §91.902, which authorizes the Texas Transportation Commission to adopt rules to implement Natural Resources Code, Chapter 91, Subchapter T.

CROSS REFERENCE TO STATUTE

Natural Resources Code, Chapter 91, Subchapter T and Transportation Code, Chapter 202, Subchapter C.

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

Filed with the Office of the Secretary of State on March 31, 2016.

TRD-201601525

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: April 20, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 463-8630

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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

Texas Medical Board

Title 22, Part 9

The Texas Medical Board proposes to review Chapter 168, Criminal History Evaluation Letters, §168.1 and §161.2, pursuant to the Texas Government Code, §2001.039.

Comments on the proposed review may be submitted to Rita Chapin, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: *rules.development@tmb.state.tx.us*. A public hearing will be held at a later date.

TRD-201601609
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Filed: April 6, 2016

♦ ♦ ♦

Adopted Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

Chapter 520. District Operations

Pursuant to the notice of proposed rule review published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9319), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision, or repeal 31 TAC Part 17, Chapter 520, District Operations, Subchapter A, Election Procedures, §§520.1 - 520.6, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received from the public on the proposed rule review; however, staff realized the rules should be amended to reflect the State Board decision to accept electronic copies of documents.

As a result of the review, the State Board determined that the rules are still necessary and readopts, with changes to §520.3(b) and §520.5(b) only, all the sections since they govern the mandated election process for soil and water conservation districts. The changes to §520.3(b) involve inserting language to state that unless specifically requested to file original forms, districts may file completed forms electronically with the state board and retain the original copies for their files. The changes to §520.5(b) state that unless specifically requested to submit original copies, districts may submit completed forms electronically to the State Office. It also adds language to specify that districts should retain originals if electronic forms are sent to the State Office.

This review and the resulting amendments concludes the review of these rules.

TRD-201601615
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: April 6, 2016

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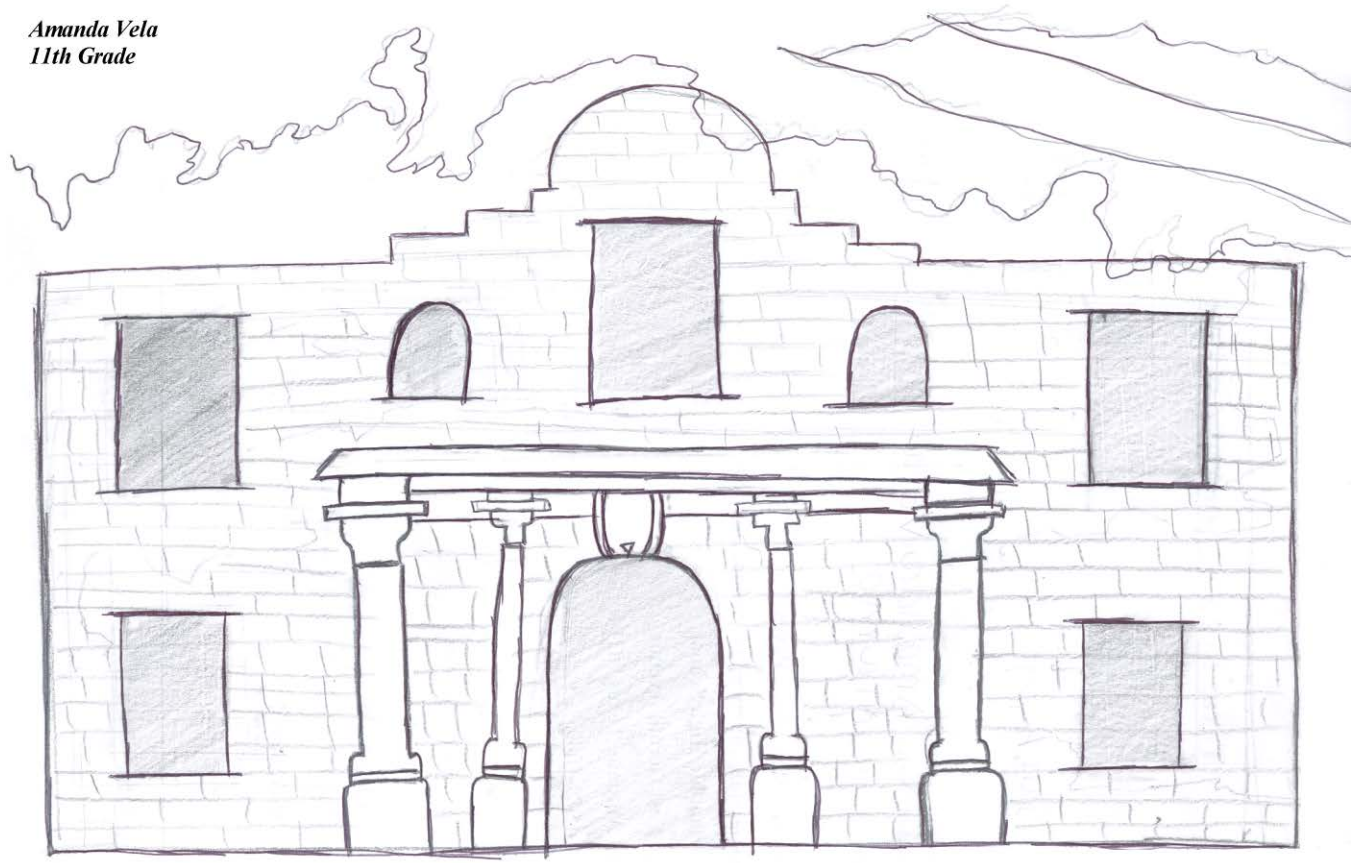
Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

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: 10 TAC §10.614(e)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

Amanda Vela
11th Grade



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.

Office of the Attorney General

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Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *County of Brazoria and the State of Texas, Acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Tammie M. Lester;* Cause No. 82279-CV; in the 239th Judicial District Court of Brazoria County, Texas.

Background: Defendant Tammie M. Lester is the owner of property located at 525 Edgewater Drive, Clute, Brazoria County, Texas. Defendant was repeatedly cited for allowing the on-site sewage facility (OSSF) at the property to become overloaded and to cause sewage and/or wastewater to flow and be deposited onto the surface of the property and onto adjacent properties, in violation of Chapters 341 and 366 of the Texas Health and Safety Code, Chapter 285 of Title 30 of the Texas Administrative Code, and Brazoria County OSSF regulations.

Proposed Settlement: Since the filing of the lawsuit in mid-2015, Defendant has replaced the malfunctioning OSSF and reduced the number of residents on the property. The parties propose an Agreed Final Judgment and Permanent Injunction, which orders the Defendant to, among other things, clean up any sewage/wastewater on the property and neighboring properties, renew OSSF maintenance contract annually, and allow the Brazoria County Environmental Health Department continued access and monitoring of the site. The proposed settlement also awards Brazoria County and the State $100 in civil penalties, to be equally divided between Brazoria County and the State, and awards the State's reasonable attorney's fees in the amount of $500.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Erin Rodman, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911.

TRD-201601514
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 31, 2016

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Danny Wilde,* Cause No. D-1-GV-14-000199; in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant Danny Wilde owns and operated a composting facility near San Angelo, in Tom Green County. Defendant stored large a large quantity of brush, cotton burs and tree trimming material at the facility to process into mulch and firewood. Defendant ceased operations at the composting facility and abandoned the material at the facility. Defendant failed to comply with two TCEQ administrative orders requiring him to obtain financial assurance for closure costs and authorization to store waste at the facility. Pursuant to a temporary injunction, the Defendant mulched the material at the facility to reduce the amount of unprocessed material stored.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment and Permanent Injunction orders Defendant to remove all the remaining waste material and mulch from the facility. The proposed judgment also assesses against Defendant civil penalties in the amount of $30,000; attorney's fees in the amount of $3,000; and $5,133 in unpaid administrative penalties assessed in the TCEQ administrative orders.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Amy Davis, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201601538
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 31, 2016

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas

Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Ector County, Texas and the State of Texas v. JAI Dining Services (Odessa), Inc.;* Cause No. D-1-GN-15-001772; in the 126th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: The case involves JAI Dining Services (Odessa), Inc., owner and operator of Jaguars Gold Club, a gentlemen's entertainment facility located at 6824 Cargo Road, Odessa, Texas 79762. The defendant is alleged to have intentionally discharged raw sewage onto the ground without authorization on at least two days, and potentially even longer. The activities are alleged to have occurred without a permit.

Proposed Agreed Judgment: The Agreed Final Judgment orders defendant to pay civil penalties and costs of prosecution to the State. Defendant agrees to pay civil penalties of $15,000 to be divided equally between Ector County and the State of Texas. The defendant will pay attorney's fees to the State of Texas in the amount of $4,000 and also pay attorney's fees to Ector County in the amount of $11,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Erin Rodman, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548 (MC-066), Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201601568
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 4, 2016

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *Ector County, Texas and the State of Texas, v. Arnulfo Aranda;* Cause No. D-1-GV-12-001449, in the 250th Judicial District Court, Travis County, Texas.

Nature of the Defendant's Operations: The case involves Arandas Trucking Services, LLC, and its use of property located in Odessa Texas as an illegal landfill. The Defendant, Arnulfo Aranda, and his employees have been dumping trash at this site with company vehicles for a number of years. This form of waste storage, and disposal is not permissible, and violates several public health and environmental protection laws, including the Texas Solid Waste Disposal Act and the Texas Clean Air Act. Since the filing of the lawsuit the Defendant has removed and properly disposed of the waste he and his employees dumped in the illegal landfill.

Proposed Agreed Judgment: The Agreed Final Judgment and orders the Defendant to pay civil penalties of $8,000 to be divided equally between Ector County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of $2,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4153, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201601598
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 6, 2016

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Comptroller of Public Accounts

Notice of Contract Amendment

The Texas Comptroller of Public Accounts ("Comptroller") announces this notice of amendment of a consulting services contract awarded to AKF Consulting LLC dba AKF Consulting Group, 757 3rd Avenue, 12th Floor (AIM), New York, New York 10017, under Request for Proposals ("RFP") 212a, to assist the Texas Prepaid Higher Education Tuition Board with administering the state's prepaid tuition plans.

The amendment adds deliverables related to the Texas ABLE Program and adds $10,000.00 to the total amount of the contract, for a new total amount of $110,000.00. The term of the contract is January 16, 2015 through December 31, 2016, with option to renew for two (2) additional one (1) year terms, one year at a time.

The RFP was published in the October 3, 2014, issue of *Texas Register* (39 TexReg 7971). The notice of award was published in the February 6, 2015, issue of *Texas Register* (40 TexReg 639).

TRD-201601536
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 31, 2016

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Notice of Contract Award

The Texas Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office announces the award of a grant as a result of Request for Applications (RFA) No. BE-G10-2013 for funds for approved projects and activities under the Comptroller's State Energy Program for energy retrofits under the LoanSTAR Revolving Loan Program.

Four contracts were awarded as follows:

City of El Paso, 300 N. Campbell, El Paso, Texas 79901. The total amount of the loan is not to exceed $7,500,000.00. The term of the loan is May 21, 2014 until repaid in full.

Texas Military Department, 200 W. 35th Street, Austin, Texas 78703. The total amount of the loan is not to exceed $51,469.50. The term of the loan is June 4, 2014 until repaid in full.

United Independent School District, 201 Linenwood Drive, Laredo, Texas 78045. The total amount of the loan is not to exceed $7,500,000.00. The term of the loan is January 12, 2015 until repaid in full.

City of Dallas, 1500 Marilla 4EN, Dallas, Texas 75201-6318. The total amount of the loan is not to exceed $6,935,946.00. The term of the loan is March 1, 2016 until repaid in full.

The notice of request for applications was published in the October 25, 2013, issue of the *Texas Register* (38 TexReg 7484).

TRD-201601479
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 30, 2016

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Notice of Contract Award

The Texas Comptroller of Public Accounts ("Comptroller"), State Energy Conservation Office announces the award of a grant as a result of Request for Applications (RFA) No. BE-G12-2014 for funds for approved projects and activities under the Comptroller's State Energy Program for energy retrofits under the LoanSTAR Revolving Loan Program.

Three contracts were awarded as follows:

Texas A&M University, 1584 TAMU, College Station, Texas 77843. The total amount of the loan is not to exceed $5,465,600.00. The term of the loan is February 19, 2016 until repaid in full.

Texas A&M University, 1584 TAMU, College Station, Texas 77843. The total amount of the loan is not to exceed $5,518,515.00. The term of the loan is February 19, 2016 until repaid in full.

Houston Community College, 200 W. 35th Street, Austin, Texas 78703. The total amount of the loan is not to exceed $51,469.50. The term of the loan is March 22, 2016 until repaid in full.

The notice of request for applications was published in the October 31, 2014, issue of the *Texas Register* (39 TexReg 8607).

TRD-201601480
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 30, 2016

♦ ♦ ♦

Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces the award of a grant as a result of Request for Applications (RFA) No. BE-G9-2013 to City of Dallas, 1500 Marilla, 4EN, Dallas, Texas 75201-6318, for funds for approved projects and activities under the Comptroller's State Energy Program for energy retrofits under the LoanSTAR Revolving Loan Program. The total amount of the loan is not to exceed $5,723,363.00. The term of the loan is March 1, 2016 until repaid in full.

The notice of request for applications was published in the April 26, 2013, issue of the *Texas Register* (38 TexReg 2650).

TRD-201601481
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 30, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/11/16 - 04/17/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/11/16 - 04/17/16 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 04/01/16 - 04/30/16 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/16 - 04/30/16 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-201601576
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 5, 2016

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 16, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an

AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 16, 2016. 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: Abdulali Tejani dba FM Express Mart; DOCKET NUMBER: 2016-0064-PST-E; IDENTIFIER: RN102367117; LOCATION: Lakeside, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 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; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Tiffany Maurer, (512) 239-2696; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Development, Incorporated; DOCKET NUMBER: 2016-0175-PWS-E; IDENTIFIER: RN101186542; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gallons per minute per connection; PENALTY: $150; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0059-PWS-E; IDENTIFIER: RN102690245; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $142; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Bartlett; DOCKET NUMBER: 2016-0066-MWD-E; IDENTIFIER: RN100835487; LOCATION: Bartlett, Bell County; TYPE OF FACILITY: wastewater treatment system; RULES VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010880001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2014 to the TCEQ Waco Regional Office by September 30, 2014; 30 TAC §305.125(1) and (11)(C) and §319.7(a), and TPDES Permit Number WQ0010880001, Monitoring and Reporting Requirements Number 3.c, by failing to maintain records of monitoring activities; 30 TAC §305.125(1) and TPDES Permit Number WQ0010880001, Other Requirements Number 6.b, by failing to maintain records of sludge accumulation and water depth measurements and calculations in the settling ponds; and 30 TAC §305.125(1) and TPDES Permit Number WQ0010880001, Monitoring and Reporting Requirements Number 7.c, by failing to submit a noncompliance notification for any effluent violation which deviates from the permitted limitation by more than 40% in writing to the Waco Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance; PENALTY: $6,332; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Nome; DOCKET NUMBER: 2015-1585-PWS-E; IDENTIFIER: RN101387843; LOCATION: Nome, Jefferson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(iii), (iv), (vi), (B)(ii) and (iii), and (E)(i), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director (ED) upon request; 30 TAC §290.111(h), by failing to properly complete the Surface Water Monthly Operating Reports (SWMORs) submitted to the commission; 30 TAC §290.122(a)(5) and (f), by failing to provide a copy of a boil water notification to the ED within ten days of its distribution; 30 TAC §290.111(e)(1)(A) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to achieve turbidity levels of the combined filter effluent (CFE) that are less than 1.0 Nephelometric Turbidity Units (NTU); 30 TAC §290.111(e)(1)(A) and (i)(3) and THSC, §341.031(a), by failing to achieve turbidity levels of the CFE that are less than 5.0 NTU; 30 TAC §290.46(q)(1) and (3), and §290.122(a)(2)(A), by failing to issue a boil water notification to the customers of the facility within 24 hours of a finished water turbidity exceeding 5.0 NTU; 30 TAC §290.111(e)(5)(C)(i), by failing to design the turbidity recorder so that the operator can accurately determine the turbidity level readings at 15-minute intervals; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.5 milligrams per liter total chlorine throughout the distribution system at all times; and 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit an SWMOR with the required turbidity and disinfectant residual data to the ED by the tenth day of the month following the end of the reporting period; PENALTY: $6,492; Supplemental Environmental Project offset amount of $6,492; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: City of Runge; DOCKET NUMBER: 2015-1739-MLM-E; IDENTIFIER: RN101917839 (Facility Number 1) and RN101424083 (Facility Number 2); LOCATION: Runge, Karnes County; TYPE OF FACILITY: wastewater treatment plant (Facility Number 1) and public water supply (Facility Number 2); RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010266001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of treated wastewater into or adjacent to any water in the state (Facility Number 1); 30 TAC §305.125(7) and §305.126(b) and TPDES Permit Number WQ0010266001, Permit Conditions Number 4.a., by failing to give notice to the executive director (ED) as soon as possible of any planned physical alterations or additions to the facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements (Facility Number 1); 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010266001, Monitoring Requirements Number 7.a., by failing to submit a written notification to the TCEQ Regional Office and the Enforcement Division within five working days of becoming aware of any noncompliance (Facility Number 1); 30 TAC §330.15(a)(1), by failing to prevent the unauthorized disposal of municipal solid waste into or adjacent to any water in the state (Facility Number 1); 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to not cause, suffer, allow, or permit any outdoor burning within the state of Texas (Facility Number 1); 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct increased coliform monitoring for the month of July 2012 and failure to submit Disinfectant Level Quarterly Operating Reports for the third and fourth quarters of 2013 (Facility Number 2); and 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and (f) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total coliform, and failing to timely

provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the MCL for total coliform for the month of March 2015 (Facility Number 2); PENALTY: $9,035; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: EnLink Midstream Services, LLC; DOCKET NUMBER: 2015-1639-AIR-E; IDENTIFIER: RN102913225; LOCATION: Decatur, Wise County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§122.121, 122.143(4), and 122.503(c)(2) General Operating Permit (GOP) Number 514/Federal Operating Permit (FOP) Number O2495, site-wide requirements Number 7.A., and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a revision application to include all applicable requirements for each emissions unit in a GOP/FOP; and 30 TAC §113.1090 and §122.143(4), 40 Code of Federal Regulations §63.6625(b)(1), GOP Number 514/FOP Number O2495, site-wide requirements Number 27, and THSC, §382.085(b), by failing to prepare a site-specific monitoring plan; PENALTY: $9,713; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: EXPLORER PIPELINE COMPANY; DOCKET NUMBER: 2015-1062-IWD-E; IDENTIFIER: RN102333911; LOCATION: Cado Mills, Hunt County; TYPE OF FACILITY: industrial wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002395000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Houston Refining LP; DOCKET NUMBER: 2015-1785-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §§101.20(2) and (3), 113.120, 115.114(a)(2)(A), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), 40 Code of Federal Regulations §63.120(b)(8), Federal Operating Permit Number O1372, Special Terms and Conditions Numbers 1.A and 26, and Flexible Permit Numbers 2167 and PSDTX985, Special Conditions Numbers 4 and 19.D, by failing to repair a leaking storage tank within 45 days of discovery; PENALTY: $59,063; Supplemental Environmental Project offset amount of $23,625; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2015-0195-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Numbers O1320 and O2288, Special Terms and Conditions (STC) Numbers 10, 14, 15, and 19, and New Source Review (NSR) Permit Numbers 19823, 5807A, and 5972A, Special Conditions (SC) Number 1, by failing to comply with annual emission rates and by failing to prevent unauthorized emissions, and by failing to comply with maximum allowable hourly emissions rates; 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O2287, STC Number 10, by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O2287, General Terms and Conditions, by failing to report all instances of deviations; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2287, STC Number 10, and NSR Permit Number 647B, SC Number 17, by failing to maintain equipment; PENALTY: $120,282; Supplemental Environmental Project offset amount of $48,113; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2015-0799-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturer plant; RULES 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), New Source Review Permit Numbers 95 and PSDTX854M2, Special Conditions Number 1, and Federal Operating Permit Number O1353, Special Terms and Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $13,125; Supplemental Environmental Project offset amount of $5,250; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: J.B. Homes, Incorporated; DOCKET NUMBER: 2016-0392-WQ-E; IDENTIFIER: RN109867852; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: JACKSON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2015-1592-PWS-E; IDENTIFIER: RN101177194; LOCATION: Tyler, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on the locational running annual average, for the second and third quarters of 2015 and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the MCL for TTHM for the second quarter of 2015; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report for the third quarter of 2014; 30 TAC §290.274(a) and (c), by failing to meet the availability requirements for the Consumer Confidence Report for the year 2014; and 30 TAC §291.76 and TWC, §5.702, by failing to pay complete regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10763 for 2014; PENALTY: $612; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: LAKE PALO PINTO AREA WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0148-PWS-E; IDENTIFIER: RN101456911; LOCATION: Gordon, Palo Pinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids, based on the locational running annual average, and failing to comply with the MCL of 0.080 mg/L for total trihalomethanes, based on the locational running annual average; PENALTY: $351; ENFORCEMENT COOR-

DINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Nobles Road Construction, Incorporated; DOCKET NUMBER: 2016-0411-WR-E; IDENTIFIER: RN106598147; LOCATION: Abilene, Taylor County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to impound, divert, or use state water without a required permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(16) COMPANY: R.J. Dairy, L.L.C.; DOCKET NUMBER: 2016-0154-AGR-E; IDENTIFIER: RN103759254; LOCATION: Dublin, Erath County; TYPE OF FACILITY: concentrated animal feeding operation (CAFO); RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and §321.31(a), and Texas Pollutant Discharge Elimination System General Permit Number TXG921143, Part III. A.5(a)2, by failing to prevent the unauthorized discharge of wastewater from a CAFO into or adjacent to any water in the state; PENALTY: $1,563; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Rochelle M. Miller; DOCKET NUMBER: 2016-0024-PWS-E; IDENTIFIER: RN101216703; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(i)(2), by failing to obtain approval from the executive director prior to using water hauling equipment; and 30 TAC §290.44(i)(2)(J) and Texas Health and Safety Code, §341.033(d), by failing to collect and submit at least one sample per month for microbiological analysis; PENALTY: $163; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(18) COMPANY: TEXAN TULIP, INCORPORATED dba Toucan's Convenience; DOCKET NUMBER: 2015-1690-PWS-E; IDENTIFIER: RN102685286; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: convenience store with a public water supply; RULE VIOLATED: 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfection residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $469; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2015-1795-AIR-E; IDENTIFIER: RN100238385; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O1253, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Whispering Oaks Water Coop; DOCKET NUMBER: 2015-1846-PWS-E; IDENTIFIER: RN101212181; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to timely submit a Disinfectant Level Quarterly Operating Report and to collect led and copper tap samples and conduct routine chloroform monitoring; PENALTY: $910; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201601574
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2016

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Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 138938

APPLICATION. Frank Bartel Transportation Inc., P.O. Box 827, Aubrey, Texas 76227-0827 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 138938 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 8901 Stewart Road, Aubrey, Denton County, Texas 76227. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.26578&lng=-96.97445&zoom=13&type=r. This application was submitted to the TCEQ on February 18, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 9, 2016.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Tuesday, May 10, 2016, at 6:00 p.m.

Green Valley School Historical Society

6900 Farm-to-Market Road 2153

Aubrey, Texas 76226

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr., Fort Worth, Texas 76118-6951, during the hours of 8:00 am to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Frank Bartel Transportation Inc., P.O. Box 827, Aubrey, Texas 76227-0827, or by calling Mr. Jim Sayles, Consultant at (512) 964-6685.

Amended Notice Issuance Date: April 5, 2016

TRD-201601608
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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Enforcement Orders

An agreed order was adopted regarding Vaithi Development, Inc., Docket No. 2013-0314-MWD-E on April 6, 2016 assessing $44,973 in administrative penalties with $41,373 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Forester Estates, LLC, Docket No. 2013-0450-MLM-E on April 6, 2016 assessing $41,035 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Clear Lake City Water Authority, Docket No. 2014-1035-MWD-E on April 6, 2016 assessing $13,725 in administrative penalties with $2,745 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding M.I.S C-STORE L.L.C., Docket No. 2014-1465-PST-E on April 6, 2016 assessing $10,117 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pilgrim's Pride Corporation, Docket No. 2014-1560-MLM-E on April 6, 2016 assessing $13,464 in administrative penalties with $2,692 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Edna, Docket No. 2014-1759-MWD-E on April 6, 2016 assessing $134,002 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GLORIA FOOD MART INC dba Gloria Food Mart, Docket No. 2014-1837-PST-E on April 6, 2016 assessing $19,736 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hackberry, Docket No. 2015-0099-MWD-E on April 6, 2016 assessing $19,425 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TAHIR ENTERPRISES, INC. dba Buy N Bye Drive In, Docket No. 2015-0120-PST-E on April 6, 2016 assessing $9,755 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Meaghan Bailey, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding John M. Brown dba Brown Scrap Tires, Docket No. 2015-0264-MSW-E on April 6, 2016 assessing $16,875 in administrative penalties with $13,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Moises Enrique Martinez dba Moy's Custom Paint & Body Shop, Docket No. 2015-0435-AIR-E on April 6, 2016 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Rebecca R. Norris dba Papa Soliz Tacos, Docket No. 2015-0468-PST-E on April 6, 2016 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TRI TRY WATER CORP., Docket No. 2015-0487-PWS-E on April 6, 2016 assessing $172 in administrative penalties with $172 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Equistar Chemicals, LP, Docket No. 2015-0592-AIR-E on April 6, 2016 assessing $50,563 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of San Benito, Docket No. 2015-0597-MWD-E on April 6, 2016 assessing $27,600 in administrative penalties with $5,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Commerce, Docket No. 2015-0626-MWD-E on April 6, 2016 assessing $38,700 in administrative penalties with $7,740 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-6155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Gilbert Molina, Docket No. 2015-0652-LII-E on April 6, 2016 assessing $957 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding RAI INVESTMENTS INC dba Deesway Grocery 126, Docket No. 2015-0656-PST-E on April 6, 2016 assessing $9,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NAYEB HOLDING, INC. dba Shop N Go #6, Docket No. 2015-0726-PST-E on April 6, 2016 assessing $9,985 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jake Marx, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Willis C. Aldridge, Docket No. 2015-0766-LII-E on April 6, 2016 assessing $1,394 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jess Robinson, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Air Products LLC, Docket No. 2015-0852-AIR-E on April 6, 2016 assessing $15,157 in administrative penalties with $3,031 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Nguyen, Enforcement Coordinator at (512) 239-6160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OZARK BOTTLED WATER, INC. dba Hill Country Springs, Docket No. 2015-0859-PWS-E on April 6, 2016 assessing $508 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ian Groetsch, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BASF Corporation, Docket No. 2015-0900-AIR-E on April 6, 2016 assessing $44,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Raymondville, Docket No. 2015-0942-MWD-E on April 6, 2016 assessing $32,625 in administrative penalties with $6,525 deferred.

Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-4935, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OCCIDENTAL PERMIAN, LTD. dba Wasson CO2 Recovery Plant, Docket No. 2015-1107-PWS-E on April 6, 2016 assessing $157 in administrative penalties with $157 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Pharr, Docket No. 2015-1115-MWD-E on April 6, 2016 assessing $27,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Rentech Nitrogen Pasadena, LLC, Docket No. 2015-1144-AIR-E on April 6, 2016 assessing $14,250 in administrative penalties with $2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAN AUGUSTINE RURAL WATER SUPPLY CORPORATION, Docket No. 2015-1227-PWS-E on April 6, 2016 assessing $175 in administrative penalties with $175 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CENTER FOR CHRISTIAN GROWTH, INC., Docket No. 2015-1279-PWS-E on April 6, 2016 assessing $330 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A SHAFAF INVESTMENTS INC dba Discount Gas & Food Mart, Docket No. 2015-1341-PST-E on April 6, 2016 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Jawaid W. Samana, KJ HOLDINGS, INC., and H. Erwin Wilbanks, Docket No. 2015-1395-PST-E on April 6, 2016 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Petrolia, Docket No. 2015-1391-PWS-E on April 6, 2016 assessing $840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dimitrios N. Manetas dba Dimitri's Cabaret, Docket No. 2015-1399-PWS-E on April 6, 2016 assessing $540 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Greenwood Independent School District, Docket No. 2015-1520-PWS-E on April 6, 2016 assessing $165 in administrative penalties with $165 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Lacy Lakeview, Docket No. 2015-1533-WQ-E on April 6, 2016 assessing $20,000 in administrative penalties with $4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GARY WATER SUPPLY CORPORATION, Docket No. 2015-1566-PWS-E on April 6, 2016 assessing $366 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Blanchard Refining Company LLC, Docket No. 2015-1609-AIR-E on April 6, 2016 assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201601597
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 139310

APPLICATION. Chisholm Trail Redi-Mix, LLC, 1948 County Road 1234, Nemo, Texas 76070-3003 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 139310 to authorize the operation of a permanent concrete batch plant. The facility is proposed to be located at 2924 Weatherford Highway, Cleburne, Johnson County, Texas 76033. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.395194&lng=-97.425336&zoom=13&type=r. This application was submitted to the TCEQ on March 9, 2016. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 24, 2016.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www.tceq.texas.gov/about/comments.html. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the execu-

tive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Monday, May 16, 2016, at 6:00 p.m.

Hampton Inn

1996 West Henderson Street

Cleburne, Texas 76033

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr., Fort Worth, Texas 76118-6951, during the hours of 8:00 am to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Chisholm Trail Redi-Mix LLC, 1948 County Road 1234, Nemo, Texas 76070-3003, or by calling Mr. Aaron Hertz, EHS Director, PlexusCRM, LLC at (512) 709-4251.

Notice Issuance Date: April 4, 2016

TRD-201601607
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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Notice of Availability and Request for Comments on a Draft Damage Assessment and Restoration Plan

AGENCIES: The Texas Commission on Environmental Quality (TCEQ); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (GLO); United States Department of the Interior (DOI); as represented by the United States Fish and Wildlife Service and the National Park Service; and the National Oceanic and Atmospheric Administration (NOAA) on behalf of the United States Department of Commerce (collectively, the Trustees).

ACTION: Notice of availability of a proposed Draft Damage Assessment and Restoration Plan/National Environmental Policy Act (NEPA) Categorical Exclusion for ecological injuries and service losses associated with the DuPont Beaumont Works Site near Beaumont in Jefferson County, Texas, and of a 30-day period for public comment beginning April 15, 2015.

SUMMARY: Notice is hereby given that the "Draft Damage Assessment and Restoration Plan/NEPA Categorical Exclusion for DuPont Beaumont Works West Marsh, Jefferson County, Texas" (Draft DARP/CE) is available for public review and comment.

These documents have been prepared by the state and federal Natural Resource Trustees to address natural resources (including ecological services) injured, lost, or destroyed within the West Marsh and a portion of the surrounding properties (the Site) near Beaumont in Jefferson County, Texas, as a result of releases of hazardous substances. The Draft DARP/CE presents the Trustees' assessment of the natural resource injuries and service losses attributable to the Site and their proposed plan to compensate for those losses by restoring ecological resources and services. The Trustees will consider input received during the public comment period before finalizing the Draft DARP/CE.

To receive a copy of the Draft DARP/CE, interested members of the public are invited to contact Richard Seiler at the Texas Commission on Environmental Quality, Remediation Division MC-136, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2523 (phone), (512) 239-2450 (fax), or via email at *richard.seiler@tceq.texas.gov*.

DEADLINE: Comments must be submitted in writing on or before May 27, 2016 to Richard Seiler of the TCEQ at the address listed in the previous paragraph.

SUPPLEMENTARY INFORMATION: The Site consists of approximately 30 acres in the northwestern corner of industrial facilities, commonly referred to as the Beaumont Works Industrial Park (BWIP) complex, formerly owned and operated by E.I. du Pont de Nemours and Company, Inc. (DuPont). The BWIP is located approximately seven miles south of Beaumont, off State Highway 347, in Jefferson County, Texas. The Site is bounded by the Neches River on the northeast, closed solid waste management units (SWMUs) to the southeast, storage tanks to the southwest, and a former intake canal on the northwest.

Starting in 1954, DuPont manufactured acrylonitrile, ammonia, methanol, methyl methacrylate (MMA), caprolactum, methionine (Hydan), Hypalon® synthetic rubber, and Nordel® hydrocarbon rubber, and blended tetraethyl lead (TEL) with halo-carbon solvent/stabilizers at the BWIP. Numerous investigations by the TCEQ characterized waste within the boundaries of four SWMUs and one former outfall ditch located within the facility's West Waste Management Area (WWMA). Historical operations at the WWMA resulted in releases of hazardous substances and their degradation products into the West Marsh.

The Trustees are designated natural resource trustees under §107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act, §311 of the Federal Water Pollution and Control Act, Title 33 of the United States Code §1321, and other applicable federal or state laws, including Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, Title 40 of the Code of Federal Regulations §§300.600 - 300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources injured or lost as a result of discharges or releases of hazardous substances.

To evaluate injury to resources for the Site, the Trustees reviewed remedial investigation data, the Screening Level Ecological Risk Assessment, and open scientific literature, and applied their collective knowledge and understanding of the function of the terrestrial and aquatic ecosystems at and near the Site. Metals (including antimony, arsenic, cadmium, chromium, copper, lead, nickel, mercury, selenium,

and zinc), volatile organic compounds (including tetrachloroethene and trichloroethene), and polychlorinated biphenyls (including Arochlor 1016 and 1260) were identified as the primary contaminants of concern (COCs). The Trustees determined that approximately 21.5 acres of benthic habitat in West Marsh were impacted by hazardous substances historically released from the WWMA. The COCs were remediated by removal and containment methods or will dissipate as a result of natural attenuation. The Trustees further determined that natural recovery combined with off-site restoration will result in restoration and compensation of benthic resources lost and/or injured due to exposure to hazardous substances. The Trustees evaluated several restoration methods and off-site projects and determined that the preferred restoration alternative included natural recovery at the Site and preservation of a 500-acre tract (the "Orange County Tract") located on the eastern bank of the Neches River approximately 3.5 river miles upstream of the Site.

The Draft DARP/CE identifies the information and methods used to define the natural resource injuries and ecological losses, including the scale of restoration actions, and identifies the restoration actions which are preferred to restore, replace, or acquire resources or services equivalent to those lost.

For further information, contact Richard Seiler at (512) 239-2523 or via email at *richard.seiler@tceq.texas.gov.*

TRD-201601573
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 5, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Saeb Kutob D/B/A Arp Food Store

SOAH Docket No. 582-16-3477

TCEQ Docket No. 2015-1245-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 5, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 30, 2015 concerning assessing administrative penalties against and requiring certain actions of Saeb Kutob d/b/a ARP Food Store, for violations in Smith County, Texas, of: Tex. Water Code §26.3475(c)(1) and 30 Tex. Admin. Code §334.50(b)(1)(A).

The hearing will allow Saeb Kutob d/b/a ARP Food Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Saeb Kutob d/b/a ARP Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Saeb Kutob d/b/a ARP Food Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Saeb Kutob d/b/a ARP Food Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and chs. 7 and 26 and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 5, 2016

TRD-201601592
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Gilbert V. Perez

SOAH Docket No. 582-16-2786

TCEQ Docket No. 2015-1576-MSW-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - May 5, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed December 14, 2015 concerning assessing administrative penalties against and requiring certain actions of Gilbert V. Perez, for violations in Frio County, Texas, of: 30 Tex. Admin. Code §330.7(a) and §330.15(a) and TCEQ Agreed Order Docket No. 2013-1063-MSW-E, Ordering Provision No. 2.b.

The hearing will allow Gilbert V. Perez, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Gilbert V. Perez, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Gilbert V. Perez to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** Gilbert V. Perez, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and ch. 7, Tex. Health & Safety Code ch. 361, and 30 Tex. Admin. Code chs. 70 and 330; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: April 1, 2016

TRD-201601594

Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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Notice of Water Quality Application

The following notice was issued on March 24, 2016.

The following does not require publication in a newspaper. Written comments or requests for a public meeting 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 ISSUED DATE OF THE NOTICE.

INFORMATION SECTION

Colorado Bend Services LLC which operates Colorado Bend 1, has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0004781000 to authorize the addition of Internal Outfall 401 and 501 for the effluent monitoring of low volume waste sources prior to discharge via Outfall 001. The existing permit authorizes the discharge of cooling tower blowdown commingled with contact stormwater and previously monitored effluent (low volume waste and contact stormwater) via Outfall 001 at a daily average flow not to exceed 1,065,000 gallons per day. The facility is located at 3863 South State Highway 60, approximately 1.4 miles southwest of the City of Wharton, Wharton County, Texas 77488.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on April 5, 2016.

TRD-201601593
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 6, 2016

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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 January 25, 2016, through April 4, 2016. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, April 8, 2016. The public comment period for this project will close at 5:00 p.m. on Monday, May 9, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Coastal Bend Bays & Estuaries Program

Location: The project site is located within the northwest corner of Nueces Bay, approximately 11 miles northwest of downtown Corpus Christi and 7 miles southwest of the City of Odem, and is within both Nueces and San Patricio Counties, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Annaville, Texas.

LATITUDE & LONGITUDE (NAD 83):

Latitude: 27.870086 North; Longitude: 97.514811 West (Center Point)

Project Description: The applicant proposes to construct 3,901 linear feet of porous circular concrete breakwater system to provide shoreline protection and preserve coastal habitat along the western shoreline of Nueces Bay. The proposed breakwater system would consist of twelve breakwater structures, all of which would be installed on the sandy, non-vegetated bay bottom to avoid impacts to aquatic resources. Structures would consist of individual circular interlocking units measuring approximately 5 feet in diameter and 2 feet tall. Units would be partially submerged and alternately stacked to create an interlocking system between the upper and lower units. Based on engineering design, approximately 0.52 units would be installed per linear foot, resulting in a total project footprint of 0.86 acres and the placement of approximately 1,008 cubic yards of porous circular concrete material within open water. Construction and installation of the proposed project would be completed via light load barges equipped with cranes.

CMP Project No: 16-1272-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2014-00725. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Applicant: Texas General Land Office

Location: The Regional General Permit (RGP) is valid in all waters of the United States (U.S.), including wetlands and tidal areas, under the authority of the Texas General Land Office (GLO), including state owned submerged land and waters of the state of Texas.

Project Description: GLO is authorized under the RGP to conduct work, and temporarily excavate and place dredged and/or fill materials for the purpose of removing hazardous debris, derelict vessels and derelict structures from waters of the U.S.

Historically, the GLO sought authorization to conduct work, and temporarily excavate and place dredged and/or fill materials for the purpose of removing hazardous debris, derelict vessels and derelict structures from waters of the U.S. on a case-by-case basis. The vast majority of projects were authorized under the Nationwide Permit (NWP) program. Several projects each year exceed acreage thresholds allowed by the NWP program and require authorization through individual permits. Both permitting mechanisms have highly variable timeframes from application to authorization.

The intent of the reissuance of this RGP is to continue to authorize all work, temporary excavation, and temporary placement of dredged and/or fill materials for the purpose of removing hazardous debris, derelict vessels and derelict structures from waters of the U.S. The GLO has been issued 24 authorizations under the current RGP.

CMP Project No: 16-1236-F1

Type of Application: U.S. Army Corps of Engineers (USACE) permit application #SWG-2010-00625. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality 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 Ms. Kate Zultner, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consistency@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201601600
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: April 6, 2016

♦ ♦ ♦

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates for the Annual 2016 Healthcare Common Procedure Coding System (HCPCS) Updates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 11, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Annual 2016 Healthcare Common Procedure Coding System (HCPCS) updates.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Annual 2016 HCPCS Updates are proposed to be effective May 1, 2016, for Hospital G Codes - Type of Service 5 (Laboratory).

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for Clinical Laboratory Services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after April 27, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis,

Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201601610
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2016

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medicaid Biennial Calendar Fee Review

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 11, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medicaid Biennial Calendar Fee Review.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Texas Human Resources Code §32.0282 which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medicaid Biennial Calendar Fee Review are proposed to be effective July 1, 2016, for the following services:

Birthing Centers

Clinical Lab

Nervous System Surgery

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC:

§355.8061, which addresses outpatient hospital reimbursement;

§355.8085, which addresses the reimbursement methodology for physicians and other practitioners;

§355.8181, which addresses the reimbursement methodology for birthing center services;

§355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps); and

§355.8610, which addresses the reimbursement methodology for Clinical Laboratory Services.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after April 27, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201601611
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2016

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Radiology Services (77013, 77022, and 78608)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 11, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Radiology Services (77013, 77022, and 78608).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Radiology Services (77013, 77022, and 78608) are proposed to be effective July 1, 2016.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other practitioners.

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after April 27, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201601612
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2016

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Medical Policy Review of Screening Brief Intervention and Referral to Treatment (SBIRT)

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 11, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Medical Policy Review of Screening Brief Intervention and Referral to Treatment (SBIRT).

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Medical Policy Review of Screening Brief Intervention and Referral to Treatment (SBIRT) are proposed to be effective July 1, 2016.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after April 27, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201601613
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2016

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Notice of Public Hearing on Proposed Medicaid Payment Rates for the Special Review Adult Ophthalmological Services

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 11, 2016, at 1:30 p.m., to receive comment on proposed Medicaid payment rates for the Special Review of Adult Ophthalmological Services.

The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 which requires public notice of and hearings on proposed Medicaid reimbursements.

Proposal. The payment rates for the Special Review of Adult Ophthalmological Services are proposed to be effective May 1, 2016.

Methodology and Justification. The proposed payment rates were calculated in accordance with 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and other practitioners; and §355.8441, which addresses the reimbursement methodology for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services (known in Texas as Texas Health Steps).

Briefing Package. A briefing package describing the proposed payments will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after April 27, 2016. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at RADAcuteCare@hhsc.state.tx.us. The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201601614
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 6, 2016

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Public Notice - Fee Schedules for Physicians and Other Practitioners

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of the amendment is to update the fee schedule in the current state plan by adjusting or implementing fees for the following:

Physicians and Other Practitioners.

The proposed amendment is effective May 1, 2016.

The proposed amendment is estimated to result in an aggregate cost of $416,337 for the remainder of federal fiscal year (FFY) 2016, consisting of $237,853 in federal funds and $178,484 in state general revenue. For FFY 2017, the estimated cost is $1,043,460, consisting of $586,216 in federal funds and $457,244 in state general revenue. For FFY 2018, the estimated cost is $1,090,102, consisting of $612,419 in federal funds and $477,683 in state general revenue.

Rate Hearing. A rate hearing will be held on May 11, 2016, at 1:30 p.m. in Austin, Texas.

Copy of Proposed Amendment. Interested parties may obtain a free copy of the proposed amendments or additional information about the amendments by contacting J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at jr.top@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

P.O. Box 149030

Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

Attention: Rate Analysis, Mail Code H-400

Brown-Heatly Building

4900 North Lamar

Austin, Texas 78751

Phone number for package delivery: (512) 730-7401

Fax

Attention: Rate Analysis at (512) 730-7475

Email

RADAcuteCare@hhsc.state.tx.us

TRD-201601575
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 5, 2016

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Public Notice - Procurement Notification

I. Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consulting services to assist HHSC and other health and human services (HHS) agencies in planning, organizing, and implementing the reorganization of the HHS system as required by Senate Bill 200**(RFP #529-16-0116).**

II. The RFP is located in full on the Electronic State Business Daily (ESBD) under link *http://204.64.145.14/bid_show.cfm?bidid=123633.*

III. The successful contractor will be expected to assist HHS agencies in creating an organizational structure that optimizes the client experience, supports the work of staff, and aligns with the health and human services system's mission and statutory responsibilities pursuant to this RFP.

IV. Health and Human Services Commission's Sole Point-Of-Contact for this Procurement is:

Vonda White, CTPM, CTCM

Manager

Health and Human Services Commission

1100 West 49th Street

Austin, Texas 78756

(512) 406-2540

Vonda.white@hhsc.state.tx.us

V. All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m., Central Daylight Time on April 7, 2016. HHSC will post all written questions received with HHSC's responses on the ESBD on April 13, 2016. All proposals must be received at the above-referenced address on or before 2:00 p.m., Central Daylight Time, on April 22, 2016. Proposals received after this time and date will not be considered.

VI. HHSC will not hold a vendor conference for this procurement. Refer to Section 3.2 of the RFP for instructions for submitting questions and comments regarding the RFP.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-201601571
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 4, 2016

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Public Notice - Waiver Amendment to the Home and Community-based Services Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment of the Home and Community-based Services (HCS) waiver program, a waiver implemented under the authority of §1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2018. The proposed effective date for the amendment is September 1, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1. Appendix A - Delete the following performance measures from Appendix A and renumber subsequent performance measures accordingly:

- A.a.6: Number and percent of newly enrolled individuals authorized by DADS that include a valid level of care evaluation as described

in the waiver application. Performance measure A.a.6 is duplicate of measure B.a.1.

- A.a.8: Number and percent of paid claims for services that are prior authorized by DADS. Performance measure A.a.8 is a duplicate of measure I.a.1.

2. Appendix B - Replace link for DADS approved diagnostic codes ICD-9 to ICD-10. The link is for the approved diagnostic codes for ICD-9 which was changed to the ICD-10 on October 1, 2015.

3. Appendix G - Renumber the performance measures in Appendix G and make the following changes:

- Replace G.a.4 "Number and percent of individuals who are free from confirmed abuse, neglect, or exploitation" with three new performance measures: G.a.1- Number and percent of individuals who are free from confirmed allegations of abuse; G.a.2 - Number and percent of individuals who are free from confirmed allegations of neglect; and G.a.3 - Number and percent of individuals who are free from confirmed allegations of exploitation

- Renumber G.a.2 to G.a.4 and revise the performance measure from "Number and percent of individuals who were informed of the procedure for reporting allegations of abuse, neglect, and exploitation. N: Number of individuals reporting they received information about reporting abuse, neglect, and exploitation. D: Number of individuals reviewed." to "Number and percent of individuals who received information on how to report abuse, neglect, or exploitation. N: Number of individuals who received information on how to report abuse, neglect, or exploitation. D: Number of individuals' case records reviewed."

4. Appendix I - Revise performance measure I.a.1 to include financial management agencies (FMSAs).

The Department of Aging and Disability Services (DADS) operates the HCS waiver, under HHSC's authority. The waiver provides services and supports to individuals with intellectual disabilities who live in their own homes, a family member's home, or community settings such as small three and four person homes. To be eligible for the waiver, individuals must meet financial eligibility criteria and need the level of care required for admission into an intermediate care facility for individuals with intellectual disabilities.

An individual may obtain a free copy of the proposed waiver amendment, including the HCS settings transition plan, or to ask questions, obtain additional information, or submit comments regarding this amendment or the HCS settings transition plan, by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Waiver Coordinator, Policy Development Support

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Waiver Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the HHSC local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at *http://www.dads.state.tx.us/providers/HCS/.*

TRD-201601577
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 5, 2016

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Department of State Health Services

Notice of Public Hearings Schedule for Development and Review of Block Grant Funds

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code, §§300w et seq.) the Department of State Health Services (department) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2016. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a work plan) of the intended use of block grant funds in advance of each FFY. Each state is required to hold hearings and to make proposals of these descriptions public within each state in such a manner as to facilitate comments.

In FFY 2016, four activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, local health departments, Community and Clinical Preventive Services and the Texas Health Communities Recognition Program. The PHHS Block Grant award for FFY 2016 is $6,288,485. Of this amount, $562,234 was required to be used for sexual assault prevention and crisis services. The department has prepared the following schedule for the development and review of the 2016 Work Plan for the PHHSBG.

In May of 2016, the department will hold public hearings in four Health Service Regions (HSRs):

May 3, 2016 3:00 p.m. - 5:00 p.m. Texas Department of State Health Services, Health Service Region 2/3 - Arlington, 1301 S. Bowen R, Ste. 200, Conference Room 2208/2220, Arlington, Texas 76013

May 3, 2016 1:00 p.m. - 3:00 p.m. Texas Department of State Health Services, Health Service Region 7, 2408 South 37th Street, Temple, Texas 76504

May 3, 2016 10:00 a.m. - 12:00 p.m. Texas Department of State Health Services, Health Service Region 9/10, The State Building, 401 East Franklin, Conference Room 2nd Floor, El Paso, Texas 79901

May 4, 2016 10:00 a.m. - 12:00 p.m. Texas Department of State Health Services, Health Region 6/5S, 5425 Polk, Suite J, Room 4B, Houston, Texas 77023

Following these hearings, the department will summarize and consider the impact of the public comments received. The department will then notify the public of the availability of a published summary of these hearings. Please note that the department will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures.

Written comments regarding the PHHSBG may be submitted through May 6, 2016, to Amy Pearson, Block Grant Coordinator, Division for Regional and Local Health Services, MC 1908, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or via email at *amy.pearson@dshs.state.tx.us.* For further information, please contact Ms. Pearson at (512) 776-2028.

TRD-201601595
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: April 6, 2016

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Texas Department of Insurance

Company Licensing

Application for admission in the State of Texas by BRICKSTREET MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Charleston, West Virginia.

Application for admission in the State of Texas by OBI AMERICA INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Harrisburg, Pennsylvania.

Application for admission in the State of Texas by RADIAN MORTGAGE GUARANTY INC., a foreign fire and/or casualty company. The home office is in Philadelphia, Pennsylvania.

Application for ACE PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to CHUBB PROPERTY AND CASUALTY INSURANCE COMPANY. The home office is in Philadelphia, Pennsylvania.

Application for ACE LIFE INSURANCE COMPANY, a foreign life, accident and/or health company, to change its name to CHUBB LIFE INSURANCE COMPANY. The home office is in Philadelphia, Pennsylvania.

Application for ACE AMERICAN INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to CHUBB AMERICAN INSURANCE COMPANY. The home office is in Philadelphia, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201601596
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: April 6, 2016

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Texas Department of Insurance, Division of Workers' Compensation

Informal Stakeholder Meeting

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) will hold an informal stakeholder meeting on Monday, April 25, 2016 in the Tippy Foster Room at the TDI-DWC Central Office, 7551 Metro Center Drive, Suite 100 in Austin, Texas. Streaming audio of the informal stakeholder meeting will be available at *http://tdimss.tdi.texas.gov/tdi/tdi.asx.*

The meeting will begin at 9:00 a.m. and TDI-DWC will receive comments on the informal drafts of the following rules:

28 Texas Administrative Code (TAC) Chapter 152: Attorneys' Fees.

Amending: 28 TAC §152.3. Approval or Denial of Fee by the Commission.

Amending: 28 TAC §152.4. Guidelines for Legal Services Provided to Claimants and Carriers.

New: 28 TAC §152.6. Attorney Withdrawal.

Labor Code §408.221 and §408.222 require, in part, the commissioner of workers' compensation to approve attorneys' fees for representing a claimant or defending an insurance carrier in a workers' compensation action. The purpose of the informal stakeholder meeting is to receive comments on the informal drafts of amendments to current §152.3 and §152.4, which would update the rules for the first time since originally adopted in 1991, and the informal draft of new §152.6, which would require attorneys to comply with the Texas Disciplinary Rules of Professional Conduct when withdrawing representation. The informal draft of new §152.6 would require attorneys to provide notice to the division, the attorney's client, and the opposing party upon withdrawal of the attorney's representation, as well as receive approval from the division prior to withdrawing once notice of a scheduled benefit review conference or contested case hearing has been received.

The informal draft of the rule was posted to the TDI website, at *http://www.tdi.texas.gov/wc/rules/drafts.html,* on April 1, 2016. The informal comment period closes on April 29, 2016 at 5:00 p.m. CST.

TDI-DWC offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, contact Idalia Salazar at (512) 804-4403 at least two business days prior to the public hearing date.

TRD-201601582
Nicholas Canaday III
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: April 5, 2016

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Texas Lottery Commission

Scratch Ticket Game Number 1749 "Money Bags"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1749 is "MONEY BAGS". The play style is "coordinate with prize legend".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1749 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1749.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: BELL SYMBOL, BILL SYMBOL, WISHBONE SYMBOL, CLOVER SYMBOL, STACK OF COINS SYMBOL, CROWN SYMBOL, CHEST SYMBOL, HORSESHOE SYMBOL, PIGGY BANK SYMBOL, KEYS SYMBOL, POT OF GOLD SYMBOL, RING SYMBOL, SAFE SYMBOL, STAR SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL and MONEY BAG SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1749 - 1.2D

PLAY SYMBOL	CAPTION
BELL SYMBOL	BELL
BILL SYMBOL	BILL
WISHBONE SYMBOL	BONE
CLOVER SYMBOL	CLVR
STACK OF COINS SYMBOL	COINS
CROWN SYMBOL	CROWN
CHEST SYMBOL	CHST
HORSESHOE SYMBOL	SHOE
PIGGY BANK SYMBOL	BANK
KEYS SYMBOL	KEYS
POT OF GOLD SYMBOL	POT
RING SYMBOL	RING
SAFE SYMBOL	SAFE
STAR SYMBOL	STAR
DIAMOND SYMBOL	DMD
GOLD BAR SYMBOL	BAR
MONEY BAG SYMBOL	$BAG

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1749), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1749-0000001-001.

K. Pack - A Pack of the "MONEY BAGS" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each pack. Please note the packs will be in an A, B, C and D configuration.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "MONEY BAGS" Scratch Ticket Game No. 1749.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "MONEY BAGS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 16 (sixteen) Play Symbols. The player scratches the play area. If a player reveals 3 or more "MONEY BAG" Play Symbols, the player wins the prize in the PRIZE LEGEND. Only the highest prize paid! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 16 (sixteen) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 16 (sixteen) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 16 (sixteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 16 (sixteen) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. No matching non-winning Play Symbols on a Ticket other than the "MONEY BAG" ($BAG) Play Symbol.

C. There will be at least one (1) but no more than two (2) "MONEY BAG" ($BAG) Play Symbols on Non-Winning Tickets.

D. Three (3) to twelve (12) "MONEY BAG" ($BAG) Play Symbols will only appear on intended winning Tickets as dictated by the prize structure.

E. No Ticket will contain more than twelve (12) "MONEY BAG" ($BAG) Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY BAGS" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY BAGS" Scratch Ticket Game prize of $30,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY BAGS" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONEY BAGS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONEY BAGS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1749. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1749 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	693,840	10.20
$4	283,200	25.00
$5	226,560	31.25
$10	141,600	50.00
$15	84,960	83.33
$20	56,640	125.00
$50	14,809	478.09
$100	5,133	1,379.31
$500	590	12,000.00
$30,000	6	1,180,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1749 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1749, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601583
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 5, 2016

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Scratch Ticket Game Number 1752 "Cash Multiplier"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1752 is "CASH MULTIPLIER". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1752 shall be $5.00 per Ticket.

1.2 Definitions in Scratch Ticket Game No. 1752.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000 and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1752 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV

38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
250	TWO FTY
$500	FIV HUN
$1,000	ONE THOU
$100,000	100 THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $250 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1752), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1752-0000001-001.

K. Pack - A Pack of the "CASH MULTIPLIER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "CASH MULTIPLIER" Scratch Ticket Game No. 1752.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "CASH MULTIPLIER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 50 (fifty) Play Symbols. If the player's YOUR NUMBERS Play Symbol in the 1X column matches the LUCKY NUMBER Play Symbol in the same GAME, the player wins the PRIZE for that GAME. If the player's YOUR NUMBERS Play Symbol in the

2X column matches the LUCKY NUMBER Play Symbol in the same GAME, the player wins DOUBLE the PRIZE for that GAME. If the player's YOUR NUMBERS Play Symbol in the 3X column matches the LUCKY NUMBER Play Symbol in the same GAME, the player wins TRIPLE the PRIZE for that GAME. Each GAME plays separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 50 (fifty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 50 (fifty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to ten (10) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100,000 and $1,000 will each appear at least once, except on Tickets winning ten (10) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a Prize Symbol will not appear more than three (3) times, except as required by the prize structure to create multiple wins.

G. This Ticket consists of ten (10) LUCKY NUMBER Play Symbols, ten (10) Prize Symbols, and thirty (30) YOUR NUMBERS Play Symbols.

H. No matching YOUR NUMBERS Play Symbols on a Ticket.

I. No matching LUCKY NUMBER Play Symbols on a Ticket.

J. On all Tickets, the LUCKY NUMBER Play Symbol will not match a YOUR NUMBERS Play Symbol (either under 1X, 2X or 3X columns) from a different GAME.

K. All wins that are not doubled or tripled will occur by matching the YOUR NUMBERS Play Symbol in the 1X column to the LUCKY NUMBER Play Symbol in the same GAME.

L. All DOUBLE wins will occur by matching the YOUR NUMBERS Play Symbol in the 2X column to the LUCKY NUMBER Play Symbol in the same GAME.

M. All TRIPLE wins will occur by matching the YOUR NUMBERS Play Symbol in the 3X column to the LUCKY NUMBER Play Symbol in the same GAME.

N. The $100,000 PRIZE can only be won with a LUCKY NUMBER Play Symbol matching the YOUR NUMBERS Play Symbol in the 1X column of the same GAME.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH MULTIPLIER" Scratch Ticket Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH MULTIPLIER" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH MULTIPLIER" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "CASH MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "CASH MULTIPLIER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 1752. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1752 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	1,008,000	7.14
$10	448,000	16.07
$15	208,000	34.62
$20	160,000	45.00
$50	34,500	208.70
$100	17,100	421.05
$250	7,020	1,025.64
$500	5,240	1,374.05
$1,000	30	240,000.00
$100,000	8	900,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.81. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1752 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1752, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601584
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 5, 2016

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Texas Department of Public Safety

Request for Proposals

Pursuant to §2167.054, Texas Government Code, the Texas Department of Public Safety (TXDPS) announces the issuance of Request for Proposal (RFP) #405-16-R047347. TXDPS seeks a lease with an initial term that is effective from date of award until August 31, 2019, for hangar space and office space in San Antonio, Texas, within a 15-mile radius of the San Antonio International Airport. The awarded lease will have three (3) one (1) year options to renew.

The deadline for questions is May 3, 2016, at 3:00 p.m. CT and the deadline for proposals is May 17, 2016, at 2:30 p.m. CT. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TXDPS to pay for any costs incurred prior to the award of a contract.

Parties interested in obtaining a hard copy of the RFP should contact Jennifer Feliciano, CTCM, CTPM, Procurement and Contract Services, at (512) 424-2096 or Jennifer.Feliciano@dps.texas.gov. The RFP will be released and available electronically on the Electronic State Business Daily at *http://esbd.cpa/state/tx/us* on April 15, 2016. Interested parties should periodically check the ESBD for updates to the RFP prior to submitting a response.

TRD-201601549
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: April 1, 2016

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 30, 2016, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Cequel III Communications I, LLC d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45784.

The requested amendment is to expand the service area footprint to include the city limits of the City of Point Blank.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45784.

TRD-201601523
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 31, 2016

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 30, 2016, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Cequel III Communications I, LLC d/b/a Suddenlink Communications for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 45785.

The requested amendment is to expand the service area footprint to include the city limits of the City of Shepard.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45785.

TRD-201601524
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 31, 2016

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Notice of Application for Exempt Utility Registration

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on December 8, 2015, of an application for exempt utility registration.

Docket Style and Number: Application of La Tierra Water for Exempt Utility Registration, Docket Number 45421.

The Application: La Tierra filed an application for exempt utility registration pursuant to Texas Water Code §13.242(c) and 16 Texas Administrative Code §24.103(d). La Tierra is currently operating under certificate of convenience and necessity number 12235 in Hays County and has less than 15 potential service connections.

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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45421.

TRD-201601570
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 4, 2016

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on March 29, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of NLP Summit Springs, LLC and Corix Utilities (Texas) Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Burnet and Blanco Counties, Docket Number 45783.

The Application: NLP Summit Springs, LLC (NLP) and Corix Utilities (Texas) Inc. (Corix) filed an application for approval of a sale, transfer or merger in which Corix will acquire all of NLP's facilities and certificate rights in Burnet and Blanco Counties. Corix's water certificate of convenience and necessity (CCN) number 13227 will be amended and NLP's CCN number 13230 will be cancelled.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45783.

TRD-201601537
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 31, 2016

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Notice of Application for Service Area Boundary Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 31, 2016, to amend a certificated service area for a service area exception within Hemphill County.

Docket Style and Number: Application of Southwest Public Service Company to Amend a Certificate of Convenience and Necessity for an Electric Service Area Exception in Hemphill County. Docket Number 45789.

The Application: Southwest Public Service Company (SPS) filed an application for a service area boundary exception to allow SPS to provide service to a specific customer located within the certificated service area of North Plains Electric Cooperative, Inc. (NPEC). NPEC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 22, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by

phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45789.

TRD-201601551
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 1, 2016

♦ ♦ ♦

Notice of Application to Amend Sewer Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a sewer certificate of convenience and necessity by expedited release within Comal and Bexar Counties.

Docket Style and Number: Petition of the Cibolo Valley Partners, LLC to Amend San Antonio Water Supply System's Certificate of Convenience and Necessity within Comal and Bexar Counties by Expedited Release, Docket Number 45794.

The Application: Cibolo Valley Partners, LLC filed an application for expedited release of approximately 498.135 acres from San Antonio Water System's sewer certificate of convenience and necessity (CCN) No. 20285 within Comal and Bexar Counties.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45794.

TRD-201601585
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Application to Amend Water and Sewer Certificates of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water and sewer certificates of convenience and necessity (CCN) in San Patricio County.

Docket Style and Number: Application of City of Portland to Amend its Certificates of Convenience and Necessity in San Patricio County, Docket Number 45781.

The Application: The City of Portland filed an application to amend its water CCN No. 10541 and sewer CCN No. 20216 in San Patricio County. Recent annexations have extended the city boundaries whereby properties inside the city limits are not within the city's existing CCNs. The City of Portland seeks to amend its CCNs to expand its service area to include its entire city limits and areas in which they are either currently providing utility service or expect utility service to be desired in the near future.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45781.

TRD-201601581
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Application to Amend Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend water certificate of convenience and necessity (CCN) in Comal, County.

Docket Style and Number: Application of Canyon Lake Water Service Company to Amend its Water Certificate of Convenience and Necessity and to Decertify a Portion of Guadalupe-Blanco River Authority's Certificate in Comal County, Docket Number 45772.

The Application: Canyon Lake Water Supply Company (Canyon Lake WSC) filed an application to amend its water CCN number 10692 and to decertify a portion of Guadalupe-Blanco River Authority's CCN number 12977 in Comal County.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45772.

TRD-201601542
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 1, 2016

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Notice of Application to Amend Water Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to amend water certificate of convenience and necessity (CCN) by expedited release in Lampasas County.

Docket Style and Number: Petition of the Lampasas Economic Development Corporation to Amend Kempner Water Supply Corporation's Certificate of Convenience and Necessity in Lampasas County by Expedited Release, Docket Number 45778.

The Application: Lampasas Economic Development Corporation (LEDC) filed an application for expedited release of approximately 151 acres from Kempner Water Supply Corporation's water certificate of convenience and necessity (CCN) No. 10456 in Lampasas County. LEDC stated that it intends to develop its property and seeks to receive water from the City of Lampasas.

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. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45778.

TRD-201601552
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 1, 2016

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Notice of Designation of Electric Providers of Last Resort for 2017-2018 Pursuant to 16 TAC §25.43 and Submission of LSP EFLs

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a proceeding initiated on January 22, 2016, to designate providers of last resort (POLRs) for the 2017-2018 term.

Project Style and Number: Designation of Electric Providers of Last Resort for 2017-2018 Pursuant to 16 Texas Administrative Code §25.43 and Submission of LSP EFLS, Project Number 45540.

The Application: The commission initiated this proceeding to designate POLRs for a term scheduled to commence in January 2017. 16 Texas Administrative Code §25.43 applies to all retail electric providers (REPs) that are serving retail customers in transmission and distribution utility service and requires that all REPs provide information to the commission necessary to establish their eligibility to serve as a POLR for the next term.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Project Number 45540.

TRD-201601550
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 1, 2016

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Notice of Filing to Withdraw Services Pursuant to 16 TAC §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 TAC §26.208(h).

Docket Title and Number: Application of Community Telephone Company to Withdraw Services Pursuant to 16 Tex. Admin. Code §26.208(h) - Docket Number 45795.

The Application: On April 1, 2016, Community Telephone Company (CTC) filed an application with the commission to withdraw Line Status Verification and Busy Interrupt operator services from its Long Distance Message Telecommunications Service Tariff. CTC also seeks to withdraw Calling Number Delivery service. CTC seeks to withdraw the services based on lack of customer demand. CTC explained that existing customers will continue to have access to other operator services and emergency services, which serve as sufficient alternatives to the services proposed to be discontinued. Customers will also be provided with an alternative to the Calling Number Delivery service at a lower monthly rate. The proceedings were docketed and suspended on April 4, 2016, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45795.

TRD-201601578
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Filing to Withdraw Services Pursuant to 16 TAC §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 TAC §26.208(h).

Docket Title and Number: Application of Wes-Tex Telephone Cooperative, Inc. to Withdraw Services Pursuant to 16 Tex. Admin. Code §26.208(h) - Docket Number 45796.

The Application: On April 1, 2016, Wes-Tex Telephone Cooperative, Inc. (Wes-Tex) filed an application with the commission to withdraw certain operator services from the Long Distance Message Telecommunications Service Tariff. Wes-Tex seeks to withdraw the following services based on lack of customer demand: Collect Calls, Billed to a Third Party, Line Status Verification, Busy Interrupt, and Person-to-Person. Wes-Tex explained that existing customers will continue to have access to other current operator services and emergency services, which serve as sufficient alternatives to the services proposed to be discontinued. The proceedings were docketed and suspended on April 4, 2016, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45796.

TRD-201601579
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Filing to Withdraw Services Pursuant to 16 TAC §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to 16 TAC §26.208(h).

Docket Title and Number: Application of Valley Telephone Cooperative, Inc. to Withdraw Services Pursuant to 16 Tex. Admin. Code §26.208(h) - Docket Number 45797.

The Application: On April 1, 2016, Valley Telephone Cooperative, Inc. (VTCI) filed an application with the commission to withdraw Collect Call, Bill to Third Number, Bill to Credit Card, Line Status Verification, Busy Interrupt, and Person-to-Person services from its Long Distance Message Telecommunications Service Tariff. VTCI seeks to withdraw the services based on lack of customer demand. VTCI explained that existing customers will continue to have access to other operator services and emergency services, which serve as sufficient alternatives to the services proposed to be discontinued. VTCI also seeks to withdraw Key Trunk and "Valley Save-A-Bundle" Package services from its Member Services Tariff. Current customers subscribing to packaged offerings will be grandfathered at their current rates. The proceedings were docketed and suspended on April 4, 2016, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting 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. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 45797.

TRD-201601580
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 4, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Totelcom Communications, LLC for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45801.

The Application: Totelcom Communications, LLC (Totelcom) filed an application with the commission for revisions to its Local Exchange Tariff to increase the rates of its Residence Monthly Access Line Rate from $17.00 to $18.00 and to increase its Lifeline Area Discount by $0.25 in all exchanges. Totelcom proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Totelcom is $60,708 in gross annual intrastate revenues. Totelcom has 3,205 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45801.

TRD-201601586
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

♦ ♦ ♦

Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 4, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of North Texas Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45802.

The Application: North Texas Telephone Company (NTTC) filed an application with the commission for revisions to its Local Exchange Tariff to increase its Residence Monthly Access Line Rate from $17.00 to $18.00 and to increase its Lifeline Area Discount by $0.25 in all exchanges. NTTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $7,704 in gross annual intrastate revenues. NTTC has 376 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45802.

TRD-201601587
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

♦ ♦ ♦

Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 4, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Lipan Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45803.

The Application: Lipan Telephone Company (Lipan) filed an application with the commission for revisions to its Local Exchange Tariff to

increase its Residence Monthly Service rates from $16.00 to $18.00, the Business Monthly Service rates from $16.50 to $18.50, and the Lifeline Area Discount by $0.50. Lipan proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by Lipan is $29,808 in gross annual intrastate revenues. Lipan has 1,242 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 29, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 29, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45803.

TRD-201601588
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 4, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Alenco Communications, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45804.

The Application: Alenco Communications, Inc. (ACI) filed an application with the commission for revisions to its Local Exchange Tariff to increase Single Line Residential Monthly Access Line rates by $2.00, and increase the Lifeline Area Discount by $0.50. ACI also proposes to increase the Single Line Business Monthly Access Line rates by $0.15 in the Dolores, West Marietta and Modena exchanges, by $2.00 in the Knippa exchange, and by $2.05 in the Alexander, Carlton and Donie exchanges. ACI proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by ACI is $29,071 in gross annual intrastate revenues. ACI has 1,693 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by April 25, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by April 25, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45804.

TRD-201601589
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 5, 2016

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Regional Water Planning Group B

Notice of Public Meeting

Notice is hereby given that the Regional Water Planning Group - Area B is seeking input from the public on the scope of planning activities to be considered during the Fifth Cycle of Regional Water Planning.

The Public Meeting will be held in conjunction with the Region B Planning Group Meeting, to be held **Wednesday, May 4, 2016 at 10:00 a.m.,** at the Red River Authority of Texas Administrative Office, 3000 Hammon Road, Wichita Falls, Texas. Written and verbal comments regarding issues that should be addressed or provisions that should be included in the Regional or State Water Plan for the Fifth Cycle of Regional Water Planning will be accepted at this meeting.

The Regional Water Planning Group - Area B includes the following Texas counties: Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and the portion of Young County that encompasses the City of Olney.

For additional information, please contact Mr. Curtis W. Campbell at (940) 723-2236 or curtis.campbell@rra.texas.gov. Written comments can be submitted to Mr. Curtis W. Campbell, Region B Chair, c/o Red River Authority of Texas, P.O. Box 240, Wichita Falls, Texas 76307-0240.

TRD-201601513
Curtis W. Campbell
Chair
Regional Water Planning Group B
Filed: March 30, 2016

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Department of Savings and Mortgage Lending

Notice of Application for Change of Control of a Savings Bank

Notice is hereby given that on March 30, 2016, an application was filed with the Savings and Mortgage Lending Commissioner of Texas for change of control of NexBank Capital, Inc., Dallas, Texas, and therefore, NexBank, SSB, Dallas, Texas by Grant James Scott, as Trustee of The SHLC Trust, Raleigh, North Carolina.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-201601557
Caroline C. Jones
Commissioner
Department of Savings and Mortgage Lending
Filed: April 4, 2016

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Eagle Lake, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for the current aviation project as described below.

Current Project: City of Eagle Lake; TxDOT CSJ No.: 1613EAGLE. Scope: Provide engineering and design services, including construction administration, to:

1. Rehabilitate and mark Runway 17-35, taxiway, apron and hangar access taxiway AG pad;

2. Construct apron expansion;

3. Relocate entrance road and parking;

4. Replace Medium Intensity Runway Lights/vault and relocate threshold;

5. Reconfigure Runway 35 connecting taxiway;

6. Demolish obsolete pavement;

7. Construct ditch; and

8. Complete obstruction evaluation.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase of the current project is 0%. **The goal will be re-set for the construction phase.** TxDOT, Aviation Division, Project Manager is Eusebio Torres, P.E.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Eagle Lake Regional Airport may include the following:

1. Relocate Runway 35 threshold and lights;

2. Change taxiway lights;

3. Paint;

4. Reimburse land expenses for Runway Protection Zones;

5. Relocate fuel farm;

6. Construct Portland Cement Concrete fuel pad;

7. Construct fuel truck road;

8. Improve Runway Safety Area; and

9. Remove Threshold Siting Surface obstructions.

The City of Eagle Lake reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation, the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "Eagle Lake Regional Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html*. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

FIVE completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division no later than May 10, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier

TxDOT - Aviation

150 East Riverside Drive

5th Floor, South Tower

Austin, Texas 78704

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Eusebio Torres, P.E., Project Manager.

TRD-201601602
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: April 6, 2016

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Notice of Public Hearing on Proposed Truck Restrictions on Interstate Highway 35 in McLennan and Hill Counties

The Texas Department of Transportation (TxDOT) will conduct a public hearing to receive comments on proposed lane use restrictions on Interstate 35 in McLennan and Hill Counties. The hearing will be held at 6:30 p.m. on Thursday, May 5, 2016 at the following location:

TxDOT Hillsboro Area Office

1400 S. Abbott Ave.

Hillsboro, Texas 76645

In accordance with Transportation Code, §545.0651 and 43 TAC §§25.601 - 25.604, the department is proposing to initiate a lane use restriction applicable to trucks, as defined in Transportation Code, §541.201, with three or more axles, and to truck tractors, also as defined in Transportation Code, §541.201, regardless of whether the truck tractor is drawing another vehicle or trailer. The proposed restriction would prohibit those vehicles from using the left or inside lane on Interstate Highway 35 in both directions **from approximately FM 2417 (Crest Dr.) in Lacy Lakeview to FM 1304 north of Abbott.**

The proposed restrictions would apply 24 hours a day, 7 days a week, and would allow the operation of those vehicles in a prohibited traffic lane for the purposes of passing another vehicle or entering or exiting the highway.

In accordance with 43 TAC §25.604, TxDOT will evaluate the impact of the proposed restriction's compliance with the requirements of Transportation Code, §545.0651 and 43 TAC §§25.601-25.604, and will hold a public hearing to receive comments on the proposed restriction.

All interested citizens are invited to attend the hearing and to provide input. Those desiring to make official comments may register starting at 6:00 p.m. Oral and written comments may be presented at the public hearing and written comments may be submitted by regular postal mail during the 30-day public comment period. Written comments may be submitted to Mr. Jacob Chau, P.E., Texas Department of Transportation, 100 S. Loop, Waco, Texas 76704. The deadline for receipt of written comments is 5:00 p.m. on Monday, May 16, 2016.

Persons with disabilities who plan to attend the public hearing 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 Mr. Michael Rhodes at (254) 867-2739 at least two business days prior to the hearing so that appropriate arrangements can be made. For more information concerning the public hearing, please contact Jacob Chau, P.E. at (254) 867-2800.

TRD-201601605
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 6, 2016

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Texas Water Development Board

Applications for April 2016

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73653, a request from the City of Wimberley, P.O. Box 2027, Wimberley, Texas 78676, received September 22, 2014, for $5,498,005 in financial assistance, consisting of a $5,255,000 loan and $243,005 in loan forgiveness from the Clean Water State Revolving Fund to finance the construction phase of a collection system and wastewater treatment plant expansion project.

Project ID #21760, a request from the Sandy Land Underground Water Conservation District, P.O. Box 130, Plains, Texas 79355-0130, received January 20, 2016, for a $2,000,000 loan from the Agriculture Water Conservation Loan Program to provide financing for an agriculture water conservation program.

Project ID #62693, a request from the City of Seymour, P.O. Box 31, Seymour, Texas 76380-0031, received December 29, 2015, for $3,000,476 in financial assistance, consisting of a $2,115,000 loan and $885,476 in loan forgiveness from the Drinking Water State Revolving Fund to finance the planning, design, and construction phases of water system improvements.

Project ID #73725, a request from the City of Sulphur Springs, 125 South Davis, Sulphur Springs, Texas 75482, received December 9, 2015, for a $18,200,000 loan from the Clean Water State Revolving Fund to finance the design and construction for the rehabilitation of the wastewater treatment plant.

TRD-201601548
Les Trobman
General Counsel
Texas Water Development Board
Filed: April 1, 2016

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code.* Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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