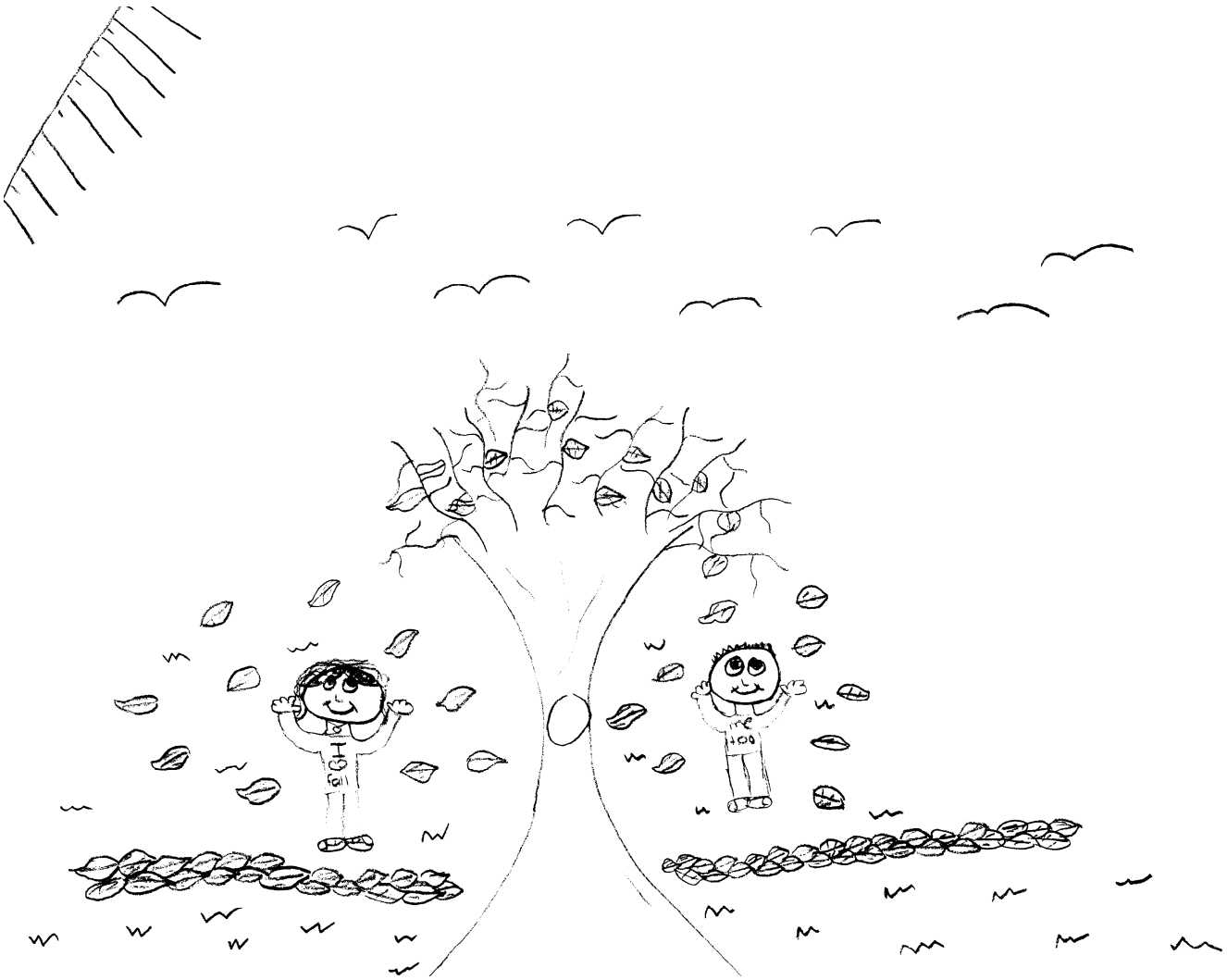
TEXAS REGISTER

Volume 41 Number 42 *October 14, 2016* *Pages 8153 - 8226*



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***Texas Register*, (ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $259.00 ($382.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

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

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

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 463-5561
FAX (512) 463-5569

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

Secretary of State –
Carlos H. Cascos

Director – Robert Sumners

Staff
Leti Benavides
Deana Lackey
Jill S. Ledbetter
Cecilia Mena
Joy L. Morgan
Breanna Mutschler
Barbara Strickland
Tami Washburn

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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.)

Opinions

Opinion No. KP-0114

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)

S U M M A R Y

A court would likely conclude that a member of a board of trustees of the United Independent School District may not simultaneously serve as a member of the City of Laredo's planning and zoning commission.

Opinion No. KP-0115

Mr. David Mattax

Commissioner of Insurance

Texas Department of Insurance

Post Office Box 149104

Austin, Texas 78714-9104

Re: Under what circumstances Texas courts afford deference to agency interpretations of statutes (RQ-0110-KP)

S U M M A R Y

Texas state courts consider deferring to an agency's interpretation of a statute only when the agency adopts the construction as a formal rule or opinion after formal proceedings. Even when the agency has formally adopted a construction, a state court will defer to that construction only upon finding that ambiguity exists in the statute at issue and that the agency's construction is reasonable and consistent with the statute's plain language.

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

TRD-201605101
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 4, 2016

♦ ♦ ♦

Office of the Attorney General

Requests for Opinions

RQ-0130-KP

Requestor:

The Honorable Richard Peña Raymond

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the State Long-Term Care Ombudsman may register a position and testify for or

against legislation pending before the Texas Legislature (RQ-0130-KP).

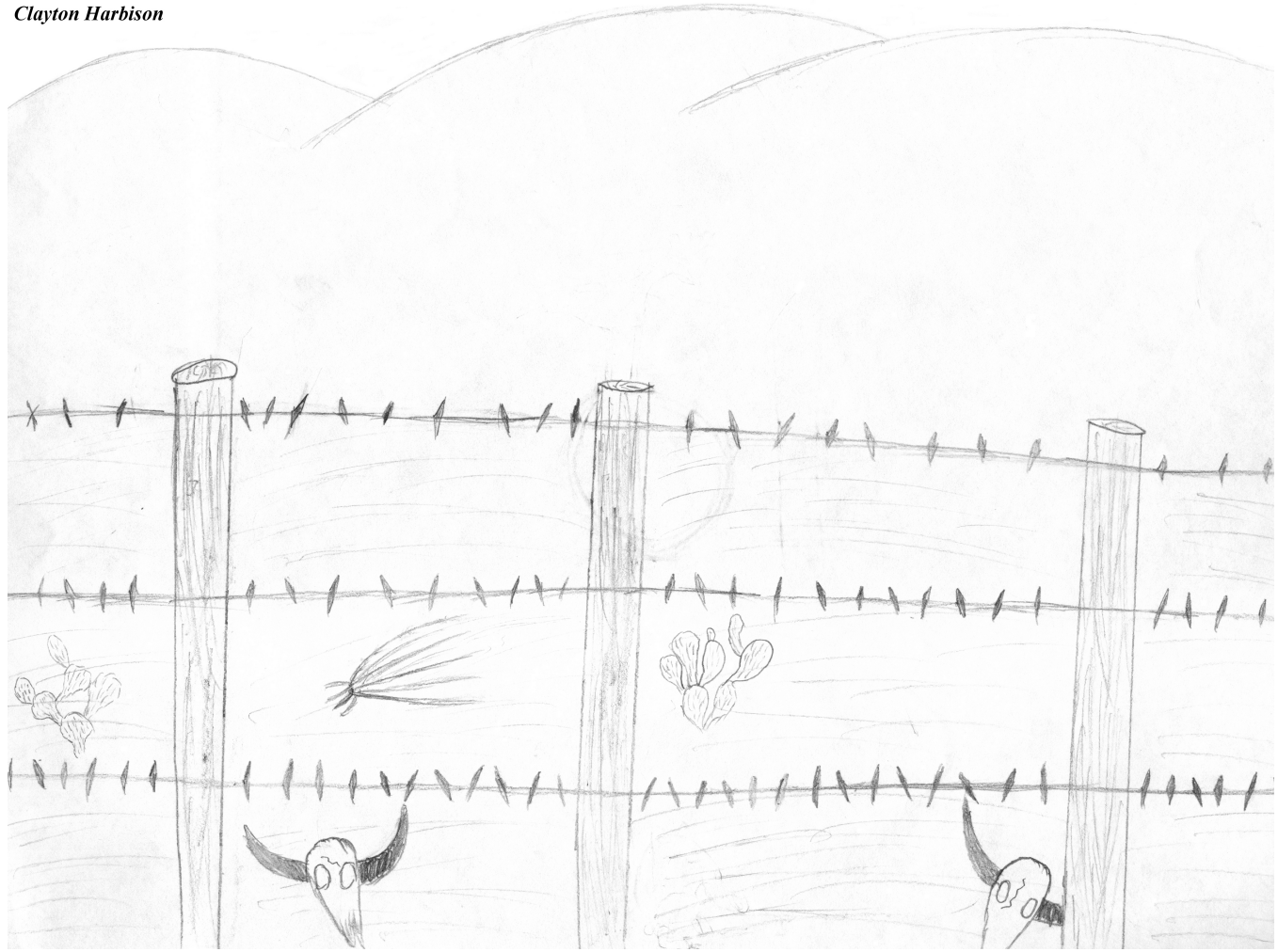
Briefs requested by November 3, 2016

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

TRD-201605116
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: October 5, 2016

♦ ♦ ♦

Clayton Harbison



PROPOSED RULES

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 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.7

The Texas State Securities Board proposes an amendment to §109.7, concerning secondary trading exemption under the Texas Securities Act, §5.O. The proposal would update the "manual exemption" contained in §5.O of the Act. Included in §5.O is the requirement that certain information about the issuer appear in either a recognized securities manual or on a form (Form 133.5 or 133.6) filed with the Securities Commissioner. The definition of "recognized securities manual," as defined by the Board in §109.7(e), would be amended as follows.

First, to emphasize that the information relied on to claim the exemption must be current, an explanation would be added to reference the type of information required in subsection (d) and a reminder that the financial information provided must be within 18 months of the date of the sale relying upon the exemption.

Second, to add the electronic information available on www.otcmarkets.com, in connection with a current or recent listing on the OTCQX or OTCQB, as a "recognized securities manual" for purposes of §5.O(9). The OTCQX and OTCQB markets require that companies listing on these markets disclose all of the information required by §5.O and §109.7 and that the information be publicly available for free on OTC Markets Group's website.

Finally, for greater ease in using the exemption and to limit the need to amend it when publications are merely added or renamed, subsection (e) would be amended to recognize the publisher of the Mergent manuals, rather than list the name of each specific manual.

Although the list of manuals in subsection (e) will include the S&P Capital IQ Standard Corporation Descriptions, S&P ceased publication of its manual as of May 2, 2016. Prior publications of the manual are available online. At the present time the Board is not removing the S&P publication from the list of manuals since some of the financial information contained therein may not be stale and parties may continue to rely upon the listing to meet the exemption.

Clinton Edgar, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Edgar 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 that registered dealers seeking reliance upon the exemption contained in §5.O of the Texas Securities Act will have notice of the manuals included among the Board's "recognized securities manuals" for purposes of the exemption. There will be no effect on micro- or small businesses. Since the rule will have no adverse economic effect on micro- or small businesses, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

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

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

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

§109.7. Secondary Trading Exemption under the Texas Securities Act, Section 5.O

(a) - (d) (No change.)

(e) The term "recognized securities manual" as used in the Texas Securities Act, Section 5.O(9)(c), is limited to the S&P Capital IQ Standard Corporation Descriptions, Best Insurance Reports Life-Health, any Mergent's Manual, and the OTC Markets Group Inc. website (www.otcmarkets.com) in connection with a current or recent listing on the OTCQX or OTCQB markets. This designation encompasses both print and electronic data and includes periodic supplements to these publications. The information provided in the recognized securities manual must contain the information specified in subsection (d) of this section. All information provided must be current. The time for determining whether the entries are current is at the date of the particular sale, not the date the manual listings are published. If a listing is not continually updated, the exemption would not be available once the published balance sheet becomes more than 18 months old. [~~the following and includes any electronic publication format that is as readily~~

~~available to the general public as the printed version, including, without limitation, CD-Rom and electronic dissemination over the Internet:~~]

[~~(1) S&P Capital IQ Standard Corporation Descriptions (including the Daily News Section);~~]

[~~(2) Best's Insurance Reports Life-Health;~~]

[~~(3) Mergent's Bank and Finance Manual and News Reports;~~]

[~~(4) Mergent's Industrial Manual and News Reports;~~]

[~~(5) Mergent's Public Utility Manual and News Reports;~~]

[~~(6) Mergent's Transportation Manual and News Reports;~~]

[~~(7) Mergent's Municipal and Government Manual and News Reports;~~]

[~~(8) Mergent's International Manual and News Reports; and~~]

[~~(9) Mergent's OTC Industrial Manual and News Reports, provided however, that Mergent's OTC Industrial News Reports are recognized solely for the purpose of updating a current listing in the OTC Industrial Manual. A registered dealer who, between the date of the last publication of Mergent's OTC Industrial Manual and the effective date of this rule, relies upon a listing in the Mergent's OTC Industrial News Reports to comply with §5.O of the Act may continue to rely upon such listing until the publication date of the next Mergent's OTC Industrial Manual, which follows the effective date of this rule.~~]

(f) (No change.)

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

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

TRD-201605076
John Morgan
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 305-8301

♦ ♦ ♦

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER T. WORKFORCE EDUCATION COURSE MANUAL ADVISORY COMMITTEE

19 TAC §§1.220 - 1.226

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§1.220 - 1.226, Subchapter T, Workforce Education Course Manual Advisory Committee. The proposed new sections authorize the Board to create an advisory committee to provide advice regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses. The new sections will affect students when courses updated by the committee are adopted by the Board.

Dr. Rex Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of adding these new sections.

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of which lower division courses are required in an associate of applied science degree or workforce certificate and improved transferability and applicability of courses from college to college. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

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

The new sections are proposed under the Texas Education Code, §130.001(a)(5), which provides the Coordinating Board with the authority to develop and establish advisory commissions composed of representatives of public junior colleges and other citizens of the state to provide advice and counsel to the coordinating board with respect to public junior colleges and Texas Government Code, §2110.005, which requires a state agency that establishes an advisory committee to adopt rules that state the purpose and tasks of the committee and describe the manner in which the committee will report to the agency.

The new sections affect the implementation of Texas Education Code §130.001.

§1.220. Authority and Specific Purposes of the Workforce Education Course Manual Advisory Committee.

(a) Authority: The authority for this subchapter is provided in the Texas Education Code, §130.001.

(b) Purposes. The Workforce Education Course Manual (WECM) Advisory Committee is created to provide the Board with advice and recommendation(s) regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; recommendations regarding field engagement in processes, maintenance, and use of the WECM; and assistance in identifying new disciplines of study, developments within existing disciplines represented by courses in the manual, vertical and horizontal alignment of courses within disciplines, and obsolescence of disciplines of study and courses.

§1.221. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.

§1.222. Committee Membership and Officers.

(a) Membership shall consist of faculty and administrators from public community, state, and technical colleges with demonstrated leadership in workforce education.

(b) Membership on the committee shall include: representatives from public community, state, and technical colleges as defined in TEC, §61.003; and

(1) one (1) ex-officio representative from the Texas Association of College Technical Educators (TACTE), nominated by the TACTE Board; and

(2) one (1) ex-officio representative from the Texas Administrators of Continuing Education (TACE), nominated by the TACE Board; and

(3) one (1) ex-officio representative from the Texas Association of College Registrars and Admissions Officers (TACRAO), nominated by the TACRAO Board.

(c) The number of committee members shall not exceed twenty-four (24).

(d) Members of the committee shall select:

(1) the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board; and

(2) the vice chair, who will succeed the presiding officer at the end of the presiding officer's year of service.

(e) Members shall serve staggered terms of up to three years.

§1.223. Duration.

The committee shall be abolished no later than January 31, 2021, in accordance with Texas Government Code, §2110.008. It may be reestablished by the Board.

§1.224. Meetings.

The committee shall meet at least twice yearly. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties. Minutes shall be available to the public after they have been prepared by the Board staff and reviewed by members of the committee.

§1.225. Tasks Assigned to the Committee.

Tasks assigned the committee include recommendations concerning:

(1) the addition of courses to the workforce education course manual;

(2) the deletion of courses from the workforce education course manual;

(3) the revision of courses in the workforce education course manual;

(4) the approval of local need course requests; and

(5) other activities necessary for the maintenance of the workforce education course manual.

§1.226. Report to the Board; Evaluation of Committee Costs and Effectiveness.

The committee chairperson shall report any recommendations to the Board on no less than an annual basis. The committee shall also report committee activities to the Board to allow the Board to properly evaluate the committee's work, usefulness, and the costs related to the committee's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.

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 October 3, 2016.

TRD-201605081
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 427-6114

CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.5, concerning the Uniform Admission Policy. Specifically, §5.5(b)(1)(D) is amended to reflect the College Board's new Scholastic Aptitude Test (SAT) college readiness benchmarks for automatic admission to general academic teaching institutions. The new college readiness scores are (1) a combined critical reading (formerly "verbal") and mathematics score of 1070 with a minimum of 500 if the SAT was administered prior to March 5, 2016; and (2), a minimum score of 480 on the Evidenced-Based Reading and Writing (EBRW) test and a minimum score of 530 on the mathematics test (no combined score), if the SAT was administered on or after March 5, 2016. Current language in §5.5(b)(1)(D) uses outdated readiness scores based on Texas Education Code (TEC) §51.803(a)(2)(B), which lists the outdated readiness scores. The amendments update the rule to reflect current readiness scores. Since this statutory provision also allows a student to qualify if he/she met the equivalent of the stated scores, the agency is updating Board rules to reflect the new standards. In addition, current §5.5(h) references TEC §51.805(a), which also cites the obsolete SAT standards. Proposed language for subsection (h) would refer back to proposed amended §5.5(b)(1)(D), rather than to the statute.

R. Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Booker has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be consistency in the SAT college readiness benchmarks cited in Board rule and by the SAT developer, the College Board. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, J.D., P.O. Box 12788, Austin, Texas 78711, or via email in care of Jane Caldwell, who may be reached at *jane.caldwell@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §51.803, which provides the Coordinating Board with the authority to adopt rules for the Uniform Admission Policy.

The amendments affect Texas Education Code, §51.803.

§5.5. Uniform Admission Policy.

(a) (No change.)

(b) All applicants from Texas schools accredited by a generally recognized accrediting agency and who graduate in the top 10 percent of their high school class or who graduate in the top 25 percent of their high school class, to the extent the governing board of a general academic teaching institution has adopted such an admission policy, shall be admitted to a general academic teaching institution if the student meets the following conditions:

(1) The student has met one of the following:

(A) Successfully completed the distinguished level of achievement under the Foundation, Recommended, or Advanced High School Program from a Texas public high school as outlined under Texas Education Code, §28.025, as well as, 19 TAC §§74.63, 74.64, 74.73, and 74.74 (relating to the distinguished level of achievement under the Foundation, Recommended High School Program, or Distinguished Achievement High School Program--Advanced High School Program);

(B) Successfully completed a curriculum from a high school in Texas other than a public high school that is equivalent in content and rigor to the distinguished level of achievement under the Foundation, the Recommended, or Advanced High School Program as outlined under subsection (c) of this section;

(C) Satisfied ACT's College Readiness Benchmarks on the ACT assessment; or

(D) Earned on the SAT assessment: [~~a score of at least a 1500 out of 2400, or the equivalent; and~~]

(i) if the SAT was administered prior to March 5, 2016, a combined critical reading (formerly "verbal") and mathematics score of 1070 with a minimum of 500 on the critical reading test; or

(ii) if the SAT was administered on or after March 5, 2016, a minimum score of 480 on the Evidenced-Based Reading and Writing (EBRW) test and a minimum score of 530 on the mathematics test (no combined score); and

(2) The student submitted an official high school transcript or diploma that must, not later than the end of the student's junior year, indicate whether the student has satisfied the requirements outlined under paragraph (1)(A) or (B) of this subsection.

(3) For applicants who graduate in the top 10 percent of their high school class and want to be considered for automatic admission under Texas Education Code, §51.803, the student must:

(A) Submit a complete application defined by the institution before the expiration of the institution's established deadline; and

(B) Have graduated from high school within the two years prior to the academic year for which the student is applying for admission.

(c) - (g) (No change.)

(h) The 18 admissions factors outlined in Texas Education Code, §51.805(b) may be considered by a general academic teaching institution when an applicant is eligible for admission under the "other admissions" provision as described in Texas Education Code, §51.805, but only after the applicant has met the curriculum or the ACT/SAT test score requirements as outlined under subsection (b)(1) of this section [~~Texas Education Code, §51.805(a)~~]. Applicants participating in the minimum, recommended, or advanced high school program may be considered under the "other admissions" provision according to this subsection.

(i) - (j) (No change.)

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

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

TRD-201605057
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 427-6114

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

19 TAC §5.44

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.44, concerning the approval of new academic programs at public universities and health-related institutions. The intent of the amendments is to clarify and streamline rules regarding the presentation of requests for new programs from public institutions of higher education to the Texas Higher Education Coordinating Board.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending this section.

Dr. Peebles has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be the clarifying of rules regarding the submission of requests for new degree and certificate programs from public institutions of higher education to the Texas Higher Education Coordinating Board. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Rex C. Peebles, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at *AQWComments@THECB.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapter C, §61.0512(a), which authorizes the Coordinating Board to evaluate requests for new degree and certificate programs from public institutions of higher education.

The proposed amendments affect the implementation of Texas Education Code, §61.0512(a).

§5.44. Presentations of Requests and Steps for Implementation.

(a) Requests for new degree programs must [~~shall~~] be made in accordance with the following procedures.

(1) Institutions must [~~shall~~] request new bachelor's and master's programs using the most recent version of the appropriate degree program request form.

(2) Institutions must submit documentation sufficient to establish that the new program meets all of the criteria listed in §5.45 of this title (relating to Criteria for New Baccalaureate and Master's Degree Programs). Board staff will review for completeness all requests for new programs within five business days of receipt. If Board staff determines that the request is incomplete and additional information or documentation is needed, the institution must respond with all of the requested information or documentation within ten working days or the request will be returned to the institution. An institution may resubmit a request that was incomplete as soon as it has obtained the requested information or documentation.

(3) New bachelor's and master's programs will [~~shall~~] be approved if all of the following conditions are met:

(A) The proposed program has institutional and governing board approval.

(B) The institution certifies compliance with the Standards for New Bachelor's and Master's Programs.

(C) The institution certifies that adequate funds are available to cover the costs of the new program.

(D) New costs during the first five years of the program would not exceed $2 million.

(E) The proposed program is a non-engineering program [~~(i.e., not classified under CIP code 14)~~].

(F) The proposed program would be offered by a university or health-related institution.

(4) If a proposed bachelor's or master's program meets the conditions in paragraph (3) of this subsection, the institution may [~~shall~~] submit a request to the Assistant Commissioner of Academic Quality and Workforce [~~Workforce, Academic Affairs and Research~~] to add the program to the institution's Program Inventory. If a proposed program does not meet the conditions outlined in paragraph (3) of this subsection, the institution must submit a proposal using the most recent version of the full request form.

(5) If the minimum number of semester credit hours required to complete a proposed bachelor's program exceeds 120, the institution must provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 120-semester credit hour limit. The [~~Coordinating~~] Board staff will review the documentation provided and make a determination to approve or deny a request to exceed the 120-semester credit hour limit.

(6) The institution proposing the program must [~~shall~~] notify all public institutions of higher education within 50 miles of the teaching site of their intention to offer the program at least 30 days prior to submitting their request to the Coordinating Board. If no objections occur, the Coordinating Board staff will [~~shall~~] update the institution's program inventory [~~accordingly~~]. If objections occur, the proposing institution must resolve those objections prior to submitting the request to the Coordinating Board. If the proposing institution cannot resolve the objection(s), and the institution wishes to submit the proposed program, the proposing institution may request the assistance of the Assistant Commissioner of Academic Quality and Workforce [~~Workforce, Academic Affairs and Research~~] to mediate the objections and determine whether the proposing institution may submit the proposed program. No new program will [~~shall~~] be approved [~~implemented~~] until all objections are resolved.

(7) The Coordinating Board reserves the right to audit a degree program at any time to ensure compliance with any of the criteria outlined in paragraph (3) of this subsection.

(8) An institution requesting a new doctoral program must [~~shall~~] submit a proposal using the most recent version of the standard doctoral program request form.

(b) Requests for new certificate programs will [~~shall~~] be made in accordance with the following procedures.

(1) New undergraduate and graduate certificate programs will [~~shall~~] be approved if all of the following conditions are met:

(A) The certificate program has institutional approval.

(B) The institution certifies that adequate funds are available to cover the costs of the new certificate program.

(C) The certificate program meets all other criteria in §5.48 of this title (relating to Criteria for Certificate Programs at Universities and Health-Related Institutions).

(2) If a proposed certificate program meets the conditions in paragraph (1) of this subsection, the institution may [~~shall~~] submit a request to the Assistant Commissioner of Academic Quality and Workforce [~~Workforce, Academic Affairs and Research~~]. If a proposed certificate program does not meet the conditions outlined in paragraph (1) of this subsection, the institution must submit a proposal using the most recent version of the full [~~standard program~~] request form.

(3) The institution proposing the certificate program must [~~shall~~] notify all public higher education institutions within 50 miles of the teaching site of their intention to offer the certificate program at least 30 days prior to submitting their request to the Coordinating Board. If no objections occur, the Coordinating Board staff shall update the institution's program inventory [~~accordingly~~]. If objections occur, the proposing institution must resolve those objections prior to submitting the request to the Coordinating Board. If the proposing institution cannot resolve the objection(s), and the institution wishes to submit the proposed certificate program, the proposing institution may request the assistance of the Assistant Commissioner of Academic Quality and Workforce [~~Workforce, Academic Affairs and Research~~] to mediate the objections and determine whether the proposing institution may submit the request for the proposed certificate program. No new certificate program will [~~shall~~] be implemented until all objections are resolved.

(4) The Coordinating Board reserves the right to audit a certificate program at any time to ensure compliance with any of the conditions outlined in §5.48 [~~§5.45~~] of this title.

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 September 29, 2016.

TRD-201605058

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 427-6114

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CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER B. RESEARCH UNIVERSITY DEVELOPMENT FUND

19 TAC §§15.20 - 15.22

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of §§15.20 - 15.22, concerning distribution of Research University Development Fund (RUDF) to research and emerging research universities. The statute authorizing rules for the RUDF, created by the 81st Texas Legislature, Regular Session, 2009, was deleted effective September 1, 2013 by Senate Bill 215, 83rd Texas Legislature, Regular Session, 2013. Between September 1, 2009 and September 1, 2013, the RUDF was codified as Texas Education Code Title 3, Subtitle B, Subchapter C, §§62.051 - 62.054.

Dr. Rex C. Peebles, Assistant Commissioner for Academic Quality and Workforce, has determined that there will be no fiscal implications for state or local governments as a result of repealing these sections.

Dr. Peebles has also determined that there will be no change in public benefit and no impact on local employment as a result of repealing these sections.

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

The repeal is proposed based on the repeal of Texas Education Code 62.054, by the 83rd Texas Legislature, Regular Session, which authorized the Coordinating Board to adopt rules for the administration of the program.

The proposed repeal does not affect the implementation of the Texas Education Code.

§15.20. Purpose and Authority.

§15.21. Definitions.

§15.22. Distribution of Research University Development Fund (RUDF).

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 September 29, 2016.

TRD-201605059

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER C. TEXAS CERTIFICATE OF HIGH SCHOOL EQUIVALENCY

19 TAC §89.42

The State Board of Education (SBOE) proposes an amendment to §89.42, concerning the Texas Certificate of High School Equivalency. The section establishes provisions for official testing centers. The proposed amendment would expand the entities eligible to serve as official paper-based testing centers and define the requirements for paper-based testing centers.

At the September 2013 meeting, the SBOE approved for second reading and final adoption proposed amendments to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter C, Texas Certificate of High School Equivalency, to update the rules, including the expansion of eligible entities that may apply to become testing centers and the change in the fee structure.

Beginning in January 2014, all tests administered as part of the Texas Certificate of High School Equivalency, with the exception of tests provided by correctional institutions, transitioned from paper-based tests to computer-based tests.

On January 5, 2015, the Texas Education Agency (TEA) released a competitive Request for Proposals (RFP). Responses were due to the TEA on February 17, 2015. At the April 2015 SBOE meeting, the TEA staff presented the results of the RFP. The SBOE requested that the TEA extend the existing provider's Memorandum of Understanding for six months beyond the expiration date and begin the development of a new RFP to potentially identify multiple test providers.

At the July 2015 meeting, the board approved a decision matrix of requirements to be included in a future RFP. During the September 2015 meeting, the board approved the competitive RFP to be released in fall 2015. On October 6, 2015, the TEA released a competitive RFP. Responses were due to the TEA on November 17, 2015.

On January 29, 2016, the board voted to award contracts to three separate companies to provide high school equivalency assessments in Texas. The three companies are Data Recognition Corporation, Educational Testing Service, and GED® Testing Service.

At the July 2016 meeting, the board approved for second reading and final adoption proposed amendments to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter C, Texas Certificate of High School Equivalency, to update the rules, including provisions relating to official testing centers, test taker eligibility, accommodations for examinees with disabilities, and the issuance of high school equivalency certificates. In response to public comments on the proposed amendments to 19 TAC Chapter 89, Subchapter C, the SBOE Committee on Instruction asked

staff to present a future item that would authorize additional entities as paper-based testing centers.

The proposed amendment to 19 TAC §89.42 would expand the entities eligible to serve as official paper-based testing centers and define the requirements for paper-based testing centers.

The SBOE approved the proposed amendment for first reading and filing authorization at its September 16, 2016 meeting.

A testing center that wishes to administer a paper-based test will be required to certify that it will make certain documentation available on request by the TEA, which may include a written description of the testing center management structure, a description and photographs of the facility, assurances regarding test security, procedures for administering the test, an emergency plan, and any changes impacting operations. In addition, the center will be required to provide certain information to the test vendor.

Any documentation required to be kept would correspond with the reporting requirements described previously.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the proposed amendment is in effect there will be no additional costs to persons or entities required to comply with the proposed rule action.

There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be added flexibility in test options and locations for individuals to access the test. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND MICROBUSINESSES. There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

REQUEST FOR PUBLIC COMMENT. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register.*

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §7.111, which requires the State Board of Education to adopt rules to develop and deliver high school equivalency examinations and provide for the administration of the examinations online.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.111.

§89.42. Official Testing Centers.

(a) Entities eligible to serve as official computer-based testing centers include:

(1) an accredited school district;

(2) an institution of higher education;

(3) an education service center;

(4) a local workforce development board;

(5) a United States Department of Labor One-Stop Career Center;

(6) a United States Department of Labor Job Corps Center;

(7) a public or private correctional institution;

(8) a public or private technical institution or career preparation school;

(9) any other public or private postsecondary institution offering academic or technical education or vocational training under a certificate program or an associate degree program; and

(10) an independent, stand-alone testing center.

(b) Entities eligible to serve as official paper-based testing centers include:

(1) an accredited school district;

(2) an institution of higher education; [~~and~~]

(3) an education service center;[~~.~~]

(4) an entity approved to provide services under the Adult Education and Family Literacy Act; and

(5) a local workforce development board.

(c) In order for a testing center to administer a paper-based test, the testing center must certify in its application that it will make the following documentation available upon request by the Texas Education Agency (TEA):

(1) a written description of the testing center management structure and how any instruction provided by the center will be separate from testing, including a certification that tests will be administered and/or proctored by an individual that has not provided direct instruction to the test taker in the previous 12 months;

(2) a written narrative and photographs that describe and show:

(A) the building;

(B) distraction-free testing rooms;

(C) a separate but attached registration and admission room;

(D) sufficient separation of testing space from classrooms used for instruction; and

(E) desk layout that includes partitions or sufficient spacing to separate test takers by at least five feet;

(3) a written plan detailing how the testing center will ensure test security, including:

(A) a secure area for staff to inventory test material and prepare documents for testing sessions;

(B) restricted access to administrator workstations, monitors, and printers;

(C) a dedicated locked storage unit for secure test material in a locked room with access only to test administrators; and

(D) a secure area for the shipping and receiving of all test materials, answer sheets, and related materials;

(4) written procedures for administering the test; and

(5) a written detailed emergency plan.

(d) A testing center that administers a paper-based test must provide to the test vendor for review written procedures for administering the test. In addition, the testing center must notify both the TEA and the test vendor in writing of testing center changes such as testing personnel, testing rooms, storage of secure documentation, the emergency plan, or any other change impacting operations.

(e) [~~(c)~~] The appropriate official of an eligible entity desiring to provide the testing service to residents in the community must request approval from the TEA [~~Texas Education Agency (TEA)~~] to apply for authorization from the authorized testing organization. If the need for a testing center in the location exists, the appropriate entity official, in writing, shall inform the state administrator appointed by the commissioner of education that the establishment of an official testing center is requested at that particular entity. The contract to operate a center shall be between the applicant entity and the authorized testing organization and its partners.

(f) [~~(d)~~] The authorization to function as an official testing center may be withdrawn by the TEA if the testing center is in violation of State Board of Education rules. Potential violations include neglecting to follow test, vendor, or jurisdictional policies and procedures; unauthorized use or sale of test candidate information; or misrepresentation of the testing center's authority to issue transcripts or credentials on behalf of the TEA.

(g) [~~(e)~~] A testing center may administer the test by paper, computer, or both, as approved by the TEA, to eligible candidates.

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 October 3, 2016.

TRD-201605082
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 5. REGISTERED INTERIOR DESIGNERS

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 TAC §5.31, pertaining to registration of interior designers by examination, and §5.51, pertaining to requirements for examination. The proposed amendments would eliminate the Architect Registration Examination (ARE) as an acceptable examination to qualify for registration as a registered interior designer (RID), beginning on January 1, 2019.

The Board's rules identifying the ARE as an acceptable examination were adopted in response to the 2013 legislation that will eventually eliminate examination grandfathering for registered interior designers. The statute, Tex. Occ. Code §1051.351, as amended in 2013, states the following: "A person who holds a certificate of registration issued under Chapter 1053 without examination may not renew the certificate on or after September 1, 2017, unless, before September 1, 2017, the person has passed the registration examination adopted by the board under Section 1053.154 and in effect on January 1, 2014." The bill that ultimately became law under §1051.305 differed slightly from a previous version, which stated that a person seeking to renew a registration would be required to pass the examination adopted by the Board in effect on September 1, 2013. Under the rules in effect on September 1, 2013, this would have been limited to the National Council for Interior Design Qualification (NCIDQ) examination. At the time of this legislation, it was the Board's understanding that, by moving the deadline to January 1, 2014, the legislature intended for the Board to engage in rulemaking to identify the ARE as an additional acceptable examination, so that architects who had previously become registered as RIDs without taking the NCIDQ would be able to retain registration on the basis of having passed the ARE.

Subsequently, on September 18, 2013, the Board amended §5.31 and §5.51 to recognize the ARE as an additional qualifying examination for initial registration as an RID, and these amended rules were in effect on January 1, 2014, thereby preserving the ability of any RID to renew the registration after September 1, 2017, if he or she has passed either the NCIDQ or ARE. However, at the time the amendments were adopted, the Board expressed an intention to revisit the issue to determine whether the ARE should continue to be accepted as a qualifying examination for registration as an RID for future applicants.

After considering the issue, the Board proposes to eliminate the ARE as an acceptable examination to qualify for prospective registration as an RID under §5.31 and §5.51. The proposed rule change is prospective and will not affect any person who is already registered as an RID. Any RID who has passed the ARE will be able to retain registration under §1051.351, because that person will have passed a registration examination adopted by the board under §1053.154 and in effect on January 1, 2014. Furthermore, the Board proposes for the ARE to remain an acceptable examination for registration until December 31, 2018, as described in proposed §5.31(b) and §5.51(a), to allow an extended period for a person who may have acted in reliance upon the rule to qualify for registration as an RID.

FISCAL NOTE

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendments will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the public benefit of the proposed rule change will be a registration examination that is specifically designed to measure competence in interior design. Architecture and interior design are distinct professions, with different areas of emphasis within each. In turn, the areas of emphasis within the ARE and the NCIDQ

differ in accordance with the requirements of practice for each profession. The Board recognizes the need for an applicant for registration as an RID to demonstrate specific competence in interior design, which is what the NCIDQ is designed to measure.

The cost of compliance with this rule change is as follows. First, the rule change will not result in the loss of interior design registration for a person who is currently registered. Additionally, because the Board is adopting an extended implementation period under which applicants are eligible to qualify for interior design registration based upon passage of the ARE until December 31, 2018, no costs will be incurred prior to that date. Subsequent to January 1, 2019, any person seeking registration as an RID will be required to pass the NCIDQ examination. The current cost to take the three sections of the examination is $1,310. However, it is important to note that registration as an interior designer does not grant an architect any additional legal rights, other than use of the term "registered interior designer." An architect is entitled to work on the same projects and offer the same professional services regardless of whether he or she is registered as an interior designer.

The proposed rules will have no negative fiscal impact on small or micro-business and no Economic Impact Statement or Regulatory Flexibility Analysis is required.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by November 15, 2016.

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

STATUTORY AUTHORITY

The amendment to §5.31 is proposed under §§1051.202, 1053.152, and 1053.154 of the Texas Occupations Code.

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1053.152 requires the Board to establish the qualifications for the issuance or renewal of an interior design registration, which includes passage of an examination, payment of required fees, and other qualifications as determined by the Board.

Section 1053.154 requires an applicant for interior design registration to pass the examination adopted by the board. Additionally, §1053.154 authorizes the Board to adopt the NCIDQ examination or a comparable examination.

§5.31. Registration by Examination.

(a) In order to obtain Interior Design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved Interior Design education and experience and shall successfully complete the Interior Design registration examination or a predecessor or other examination deemed equivalent by NCIDQ as more fully described in Subchapter C of this chapter.

(b) Alternatively, prior to December 31, 2018, an Applicant may obtain Interior Design registration by examination by successfully completing the Architectural Registration Examination or another examination deemed equivalent by NCARB after fulfilling the prerequisites of §1.21 and §1.41 of this title relating to Board approval to take the Architectural Registration Examination for architectural registration by examination. This subsection is repealed effective January 1, 2019.

(c) For purposes of this section, an Applicant has "approved Interior Design education" if:

(1) The Applicant graduated from:

(A) a program that has been granted professional status by the Council for Interior Design Accreditation (CIDA) or the National Architectural Accreditation Board (NAAB);

(B) a program that was granted professional status by CIDA or NAAB not later than two years after the Applicant's graduation;

(C) a program that was granted candidacy status by CIDA or NAAB and became accredited by CIDA or NAAB not later than three years after the Applicant's graduation; or

(D) an Interior Design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a CIDA or NAAB accredited professional program;

(2) The Applicant has a doctorate, a master's degree, or a baccalaureate degree in Interior Design;

(3) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from an Interior Design program at an institution accredited by an agency recognized by the Texas Higher Education Coordinating Board;

(4) The Applicant has:

(A) A baccalaureate degree in a field other than Interior Design; and

(B) An associate's degree or a two- or three-year certificate from a foreign Interior Design program approved or accredited by an agency acceptable to the Board.

(d) [~~(b)~~] In addition to educational requirements, an applicant for Interior Design registration by examination in Texas must also complete approved experience as more fully described in Subchapter J of this chapter (relating to Table of Equivalents for Education and Experience in Interior Design).

(e) [~~(c)~~] The Board shall evaluate the education and experience required by subsection (a) of this section in accordance with the Table of Equivalents for Education and Experience in Interior Design.

(f) [~~(d)~~] For purposes of this section, the term "approved Interior Design education" does not include continuing education courses.

(g) [~~(e)~~] An Applicant for Interior Design registration by examination who enrolls in an Interior Design educational program after September 1, 2006, must graduate from a program described in subsection (c)(1) [~~(a)(1)~~] of this section.

(h) [~~(f)~~] In accordance with federal law, the Board must verify proof of legal status in the United States. Each Applicant shall provide

evidence of legal status by submitting a certified copy of a United States birth certificate or other documentation that satisfies the requirements of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. A list of acceptable documents may be obtained by contacting the Board's office.

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 September 29, 2016.

TRD-201605060
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 305-8519

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SUBCHAPTER C. EXAMINATION

22 TAC §5.51

STATUTORY AUTHORITY

The amendment to §5.51 is proposed under §§1051.202, 1053.152, and 1053.154 of the Texas Occupations Code.

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1053.152 requires the Board to establish the qualifications for the issuance or renewal of an interior design registration, which includes passage of an examination, payment of required fees, and other qualifications as determined by the Board.

Section 1053.154 requires an applicant for interior design registration to pass the examination adopted by the board. Additionally, §1053.154 authorizes the Board to adopt the NCIDQ examination or a comparable examination.

§5.51. Requirements.

(a) An Applicant for Interior Design registration by examination in Texas must successfully complete all sections of the National Council for Interior Design Qualification (NCIDQ) examination or a predecessor or other examination NCIDQ deems equivalent to the NCIDQ examination. Alternatively, prior to December 31, 2018, [~~In lieu of successfully completing the NCIDQ examination,~~] an applicant may obtain Interior Design registration by examination by successfully completing [~~complete~~] all sections of the Architectural Registration Examination (ARE), or another examination NCARB deems equivalent to the ARE, after fulfilling the requirements of §1.21 and §1.41 of this title relating to Board approval to take the ARE for architectural registration by examination.

(b) - (e) (No change.)

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

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

TRD-201605061
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 305-8519

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TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 109. DOMESTIC RELATIONS ORDERS

The Texas County and District Retirement System ("TCDRS") proposes amendments to §§109.2, 109.12, and 109.14, and proposes to repeal §109.6, concerning Domestic Relations Orders. This proposed rulemaking implements §841.0091 of the Texas Government Code, which provides that the TCDRS Board may adopt rules to allow the TCDRS System to split a member's accrued benefit into two separate benefit accounts upon the acceptance of a qualified domestic relations order. Under the current rules, the ex-spouse of a member ("alternate payee") is linked to the member's account and may not commence a distribution unless and until the member commences a benefit or dies. Under the proposed amendments, a separate account is created for the alternate payee and the alternate payee may commence the benefit awarded to him independently of the action by the member.

The proposed amendment to §109.2 defines the term Vested.

The proposed repeal of §109.6 removes unnecessary language concerning the contents of a qualified domestic relations order.

The proposed amendment to §109.12 specifies when an alternate payee is eligible to receive the benefit awarded under the qualified domestic relations order and what form of benefit is available to the alternate payee. In addition, the amendment defines the rights of an alternate payee's beneficiary should the alternate payee die before commencing a benefit.

The proposed amendment to §109.14 makes conforming changes as required by the new language proposed in §109.12 concerning the timing and form of the distribution to the alternate payee, and provides that all distributions must be made in accordance with federal tax law.

Ann McGeehan, General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. McGeehan has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the proposed amendments will be improved administration of qualified domestic relation orders. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Ann McGeehan, General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, Texas

78768-2034, faxed to (512) 328-8887, or submitted electronically to legaldept@tcdrs.org.

34 TAC §109.2

The amendments are proposed under the Government Code, §804.003(n) and §841.0091, which authorize the Board of Trustees to adopt rules to implement Chapter 804 and to divide a member's accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit.

The Government Code, §841.0091 is affected by these proposed amendments.

§109.2. Definitions.

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

(1) Accumulated contributions--The contributions, other member deposits, and interest credited to a member's individual account in the employees saving fund.

(2) Act--Texas Government Code, Title 8, Subtitle F, as amended.

(3) Actuarial present value--The value of a benefit that, as computed by the system in its sole discretion, is consistent with §841.001(1) of the Act.

(4) Alternate payee--A spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by the system with respect to such member or retiree.

(5) Benefits--Any of the payments or benefits described in §109.12 [~~§109.6(a) and (b)~~] of this title [~~(relating to Order Should Divide All Benefits)~~].

(6) Domestic relations liaison--A person (who may or may not be an employee of the system) who is designated by the director of the system to receive and take action concerning domestic relations orders that are sent or delivered to the system.

(7) Domestic relations order--Any judgment, decree, or order (including one which approves a property settlement agreement) which:

(A) relates to the provision of child support, temporary support, or marital property rights to a spouse, former spouse, child, or other dependent of a member or former member of the system; and

(B) is made pursuant to the Texas Family Code or any other applicable domestic relations or community property law.

(8) Participant--A member, former member of the system who has sums of money on deposit with the system or who is or may become entitled to receive any benefit from the system based on membership in the system, or a former member of the system who has commenced receiving a monthly benefit from the system.

(9) Parties--The participant and all alternate payees named in a domestic relations order.

(10) Vested--A participant is vested when he or she has earned the right to receive a lifetime monthly benefit in the future under the terms of the plan.

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

Filed with the Office of the Secretary of State on October 3, 2016.

TRD-201605084
Ann McGeehan
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 637-3247

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34 TAC §109.6

The repeal is proposed under the Government Code, §804.003(n) and §841.0091, which authorize the Board of Trustees to adopt rules to implement Chapter 804 and to divide a member's accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit.

The Government Code, §841.0091 is affected by this proposal.

§109.6. Order Should Divide All Benefits.

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 October 3, 2016.

TRD-201605088
Ann McGeehan
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 637-3247

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34 TAC §109.12

The amendments are proposed under the Government Code, §804.003(n) and §841.0091, which authorize the Board of Trustees to adopt rules to implement Chapter 804 and to divide a member's accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit.

The Government Code, §841.0091 is affected by these proposed amendments.

§109.12. Payments to Alternate Payees.

(a) At any time after a qualified domestic relations order is filed and approved by the system, the alternate payee may withdraw in a lump sum the accumulated contributions attributable to the interest awarded to the alternate payee by the qualified domestic relations order.

(b) The alternate payee may commence a life annuity calculated in accordance with the terms of the plan and based on the interest awarded to such alternate payee at such time when the participant:

(1) is eligible to retire;

(2) commences a disability retirement;

(3) dies and was eligible for a survivor death benefit under §844.407 of the Government Code; or

(4) has attained the age at which the participant would have been eligible to retire, if the participant withdrew his or her account and was vested at the time of withdrawal.

(c) An alternate payee may commence an annuity under subsection (b)(1) of this section even if the participant has not retired or

under subsection (b)(4) even if the participant is not eligible for an annuity benefit.

(d) If the participant dies before commencing a benefit, and the participant was eligible for a survivor annuity under §844.407 of the Government Code, then the alternate payee may commence an annuity under subsection (b)(3) or withdraw the accumulated contributions awarded under the qualified domestic relations order.

(e) If the participant dies before commencing a benefit, and the participant was not eligible for a survivor annuity death benefit under §844.407 of the Government Code, then the alternate payee may withdraw the accumulated contributions associated with the interest awarded under the qualified domestic relations order.

(f) The alternate payee must commence a distribution when the participant attains age 70 1/2 or when the alternate payee attains age 70 1/2, whichever is earlier. If the participant is still a depositing member and not vested, then the alternate payee is not required to commence an annuity or take a withdrawal. If the participant is vested when a mandatory distribution is required, the alternate payee is eligible for an annuity benefit.

(g) If the alternate payee dies before commencing a benefit, and the participant is eligible for a survivor annuity benefit under §844.407 of the Government Code or has commenced a disability retirement, then the alternate payee's beneficiary must commence a survivor annuity pursuant to §844.407 that is actuarially equivalent to the deceased alternate payee's benefit awarded under the qualified domestic relations order.

(h) If the alternate payee dies before commencing a benefit and the participant is not eligible for a survivor benefit under §844.407 of the Government Code, then the alternate payee's beneficiary is eligible for a benefit equal to the accumulated contributions awarded to the alternate payee at the time of the alternate payee's death.

(i) If the alternate payee dies after commencing a life annuity, then the alternate payee's beneficiary may be eligible for a lump sum payment equal to the difference of the aggregate annuity payments made to the alternate payee, less the accumulated contributions associated with the interest awarded to the alternate payee, if any.

[~~(a) In the event that an eligible participant or surviving beneficiary of an eligible participant applies for a withdrawal of the participant's accumulated contributions after the date that a domestic relations order is received by the system, the system will make a lump-sum payment to the alternate payee if the domestic relations order so provides and the order has been determined to be a qualified domestic relations order.~~]

[~~(b) In the event that the participant or the participant's beneficiary begins receiving an annuity after the date that a qualified domestic relations order is received by the system, and the order provides for a division of the annuity in that event, the benefit payable to the alternate payee will be an annuity payable monthly during the lifetime of the alternate payee, which annuity is the actuarial equivalent of the portion of the participant's benefit that was awarded to the alternate payee under the domestic relations order.~~]

(j) [~~(c)~~] Subsections (a) and [~~Subsection~~] (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after January 1, 2017 [~~1990~~], and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity or withdrawal.

(k) [~~(d)~~] If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity, the system shall divide the annuity into two single life annuities; one payable to the alternate payee and the other payable to the participant in accordance with the order and the rules of the plan. The system shall compute the two single life annuities by determining the actuarial present value of participant's current annuity as of the date that the system has approved the order, and creating an annuity payable to the alternate payee based on the actuarial present value of participant's current annuity awarded under the order to the alternate payee and creating a second life annuity payable to participant based on the remaining actuarial present value of participant's current annuity. Payments to the participant and to the alternate payee cease upon their respective deaths.

(l) [~~(e)~~] If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity under which participant chose a dual life option, or a guaranteed term option and the term has not expired, and designated a person other than the alternate payee as beneficiary, then the system, in computing the two single life annuities to be paid to the participant and alternate payee respectively, shall first calculate the actuarial present value of the participant's current annuity that is not attributable to the beneficiary as of the date that the system has approved the order. The interest of the beneficiary in the participant's current retirement annuity will not be affected by the division of benefits. The actuarial present value of the participant's current annuity that is not attributed to the beneficiary is then divided into two single life annuities. The single life annuity payable to alternate payee is based on the actuarial present value of participant's current annuity not attributable to the beneficiary awarded under the order to the alternate payee, and the participant's single life annuity is computed based on the remaining actuarial present value of participant's current annuity not attributable to the beneficiary.

[~~(f) If a person's membership in the system has terminated, and under the terms of a qualified domestic relations order, an alternate payee would be entitled to receive a portion of the benefit that would be payable to the former member, or the former member's beneficiary, and if a valid application for the benefit has not been filed with the system within 60 days from the date the system mails notice of membership termination in accordance with Government Code, §845.505 so that payment can be made to the alternate payee, the director may commence payment of the benefit that would be payable to the alternate payee if the person entitled to apply for the former member's benefit had filed an application for a retirement annuity. If the person entitled to apply for the former member's benefit would be entitled to only the accumulated contributions of the former member, the alternate payee will receive the amount that would be payable to the alternate payee if the person had filed an application for withdrawal of accumulated contributions.~~]

[~~(g) In accordance with Government Code, §804.004, and in lieu of a life annuity described in §844.006(d) of that code or in subsection (b) or subsection (f) of this section that would otherwise be payable to an alternate payee under a qualified domestic relations order, the system is authorized, but not required, to make a single lump-sum payment to the alternate payee in an amount that is the actuarial equivalent of such life annuity if:~~]

[~~(1) The actuarially equivalent amount is not more than $25,000; or;~~]

[~~(2) At the time the monthly annuity payments would commence, the alternate payee has directed that payment of the monthly annuity is to be delivered outside of the United States and any possession of the United States. The determination of whether to pay an amount authorized by this subsection in lieu of the interest awarded by the qualified domestic relations order is at the sole and exclusive discretion of the system.~~]

(m) [~~(h)~~] The mortality assumption for alternate payees for determining the actuarial equivalent of a benefit payable to an alternate payee shall be the same as the mortality assumption for beneficiaries as set forth in §103.1 [~~§103.1(a)~~] of this title (relating to Actuarial Tables) with regard to service retirements.

(n) [~~(i)~~] If participant's employer grants a cost of living adjustment pursuant to the terms of the plan, [~~and if participant is an eligible retiree for purposes of receiving the cost of living adjustment,~~] and if alternate payee has commenced an annuity, then the alternate payee is eligible to receive a cost of living adjustment to his or her annuity. [~~an annuity pursuant to the approved domestic relations order submitted to the system, then the alternate payee shall receive a pro-rated cost of living adjustment attributable to the monthly benefit awarded to alternate payee.~~]

(o) Notwithstanding any other provision of this chapter, all distributions made under this chapter must be determined and made in accordance with §401(a) of the Internal Revenue Code, including but not limited to §401(a)(9); and §415.

~~(j) Except as provided in subsection (f) of this section, no payment shall be made by the system to an alternate payee before the time that the participant or the participant's beneficiary files a valid application for a refund or a retirement annuity.~~]

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 October 3, 2016.

TRD-201605085
Ann McGeehan
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 637-3247

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34 TAC §109.14

The amendments are proposed under the Government Code, §804.003(n) and §841.0091, which authorize the Board of Trustees to adopt rules to implement Chapter 804 and to divide a member's accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit.

The Government Code, §841.0091 is affected by these proposed amendments.

§109.14. Provisions Incorporated by Reference.

An order on the form set forth in §109.13 of this title (relating to Form of Qualified Domestic Relations Order) expressly incorporates all of the following by reference.

(1) The order shall not be interpreted in any way to require the Plan to provide any type or form of benefit or any option not otherwise provided under the Plan.

(2) The order shall not be interpreted in any way to require the Plan to provide increased benefits determined on the basis of actuarial value.

(3) The order shall not be interpreted in any way to require the Plan to pay any benefits to an/any Alternate Payee named in the order which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

[~~(4) The order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of Participant, the distribution of a withdrawal of contributions to Participant as authorized by the statutes governing the Plan, or other distribution to Participant required by law.~~]

(4) [~~(5)~~] If the Plan provides for a reduced benefit upon "early retirement," the order shall be interpreted to require that, in the event of Participant's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced in a proportionate amount.

(5) [~~(6)~~] The order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of Participant's death, or to require the selection of a particular benefit payment plan or option.

(6) [~~(7)~~] In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is increased as a result of amendments to the law governing the Plan, Alternate Payee shall receive a proportionate part of such increase unless such an order would disqualify the order under the rules the Plan has adopted with regard to qualified domestic relations orders.

(7) [~~(8)~~] In the event that, after the date of the order, the amount of any benefit otherwise payable to Participant is reduced by law, the portion of benefits payable to Alternate Payee shall be reduced in a proportionate amount.

(8) [~~(9)~~] If, as a result of Participant's death after the date of the order, a payment is made by the Plan to Participant's estate, surviving spouse, or designated beneficiaries, which payment does not relate in any way to Participant's length of employment or accumulated contributions with the Plan, but rather is purely a death benefit payable as a result of employment or retired status at the time of death, no portion of such payment is community property, and Alternate Payee shall have no interest in such death benefit.

(9) [~~(10)~~] If the board of trustees of the Plan has by provided that, in lieu of paying an alternate payee the interest awarded by a qualified domestic relations order, the Plan may pay the alternate payee an amount that is the actuarial equivalent of an annuity payable in equal monthly installments for the life of the alternate payee, or a lump sum, then and in that event the Plan is authorized to make such a payment under the order.

(10) [~~(11)~~] All payments to Alternate Payee under the order shall terminate upon Alternate Payee's death, and Alternate Payee's beneficiary may be entitled to a benefit under §109.12. [~~or at such earlier date as may be required as a result of the retirement option selected by Participant.~~]

(11) [~~(12)~~] All benefits payable under the Plan, other than those payable [~~under paragraph 4 of the order~~] to Alternate Payee as provided in a qualified domestic order, shall be payable to Participant in such manner and form as Participant may elect in his/her sole and undivided discretion, subject only to Plan requirements.

(12) [~~(13)~~] Alternate Payee must [~~is ORDERED to~~] report any retirement payments received on any applicable income tax return, and must [~~to~~] promptly notify the Plan of any changes in Alternate Payee's mailing address. The Plan is authorized to issue a Form 1099R on any direct payment made to Alternate Payee.

(13) [~~(14)~~] Participant is designated a constructive trustee for receiving any retirement benefits under the Plan that are due to Alternate Payee but paid to Participant. Participant must [~~is ORDERED~~

~~to~~] pay the benefit defined in this paragraph directly to Alternate Payee within three days after receipt by Participant. All payments made directly to Alternate Payee by the Plan shall be a credit against this order.

(14) [~~(15)~~] The Court retains jurisdiction to amend the order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated.

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 October 3, 2016.

TRD-201605086
Ann McGeehan
General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 637-3247

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

The Texas Department of Transportation (department) proposes amendments to §§9.11, 9.13, 9.15, 9.17, and 9.18, concerning Highway Improvement Contracts and §9.227, Information from Bidders, concerning the Disadvantaged Business Enterprise (DBE) Program.

EXPLANATION OF PROPOSED AMENDMENTS

These rules amend the department's rules relating to highway improvement contracts to improve compliance with federal regulations concerning the participation of disadvantaged business enterprises (DBE) in those types of contracts. Additionally, the amendments correct citations within the rules to other rule provisions.

Amendments to §9.11, Definitions, update section references in the definitions of disadvantaged business enterprise, historically underutilized business, and small business enterprise to the appropriate rules.

Amendments to §9.13, Notice of Letting and Issuance of Bid Forms, add subsection (e)(1)(B)(vii), which prohibits the department from issuing a bid form for a highway construction or maintenance contract to an individual or entity that is prohibited from submitting a bid on the project under §9.18(b).

Amendments to §9.15, Acceptance, Rejection, and Reading of Bids, update a rule citation and conform wording within the section to the terminology used in the cited section.

Amendments to §9.17, Award of Contract, add subsections (i) and (j), which set out the periods during which an apparent successful bidder is required to submit the DBE information required by §9.227 to be awarded the contract. This change is necessary to comply with the DBE bidding requirements of federal regulation, 49 C.F.R. §26.53.

Amendments to §9.18, After Contract Award, clarify that for a construction contract containing a DBE goal, failure to submit the DBE information required by §9.227 within the period described by §9.17(i), as added in this rulemaking, will result in forfeiture of the bid guaranty. This change is necessary to comply with the DBE bidding requirements of federal regulation, 49 C.F.R. §26.53. The amendments also change the heading of the section to "Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements" to more clearly describe the contents of the section.

Amendments to §9.227, Information from Bidders, reorganize, without substantive change, the section for additional clarity and conform the section to the changes made by this rulemaking to §9.17 and §9.18.

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. Tracy Cain, P.E., Director, Construction 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. Cain 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 efficiency and compliance with federal regulations. 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 §9.17 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Award of Contract Rules." The deadline for receipt of comments is 5:00 p.m. on November 14, 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 B. HIGHWAY IMPROVEMENT CONTRACTS

43 TAC §§9.11, 9.13, 9.15, 9.17, 9.18

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter A.

§9.11. Definitions.

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

(1) Advertisement--The public announcement required by law inviting bids for work to be performed or materials to be furnished.

(2) Alternate bid item--A bid item identified by the department as an acceptable substitute for a regular bid item.

(3) Apparent low bidder--The bidder determined to have the numerically lowest total bid as a result of the tabulation of bids by the department.

(4) Available bidding capacity--The contractor's approved bidding capacity less uncompleted work on department contracts.

(5) Award--The commission's acceptance of a contractor's bid for a proposed contract that authorizes the department to enter into a contract.

(6) Bid--The offer of the bidder for performing the work described in the plans and specifications including any changes made by addenda.

(7) Bid bond--The security executed by the contractor and the surety furnished to the department to guarantee payment of liquidated damages if the contractor fails to enter into an awarded contract.

(8) Bidder--An individual, partnership, limited liability company, corporation, or joint venture submitting a bid for a proposed contract.

(9) Bidder's Questionnaire--A prequalification form that reflects detailed equipment and experience data but waives audited financial data.

(10) Bidding capacity--The maximum dollar value a contractor may have under contract with the department at any given time.

(11) Bid error--A mathematical mistake by the bidder in the unit bid price entered in the bid.

(12) Bid guaranty--The security furnished by the bidder as a guaranty that the bidder will enter into a contract if awarded the work.

(13) Building contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or maintenance of a department building or appurtenant facilities. Building contracts are considered to be highway improvement contracts.

(14) Certificate of insurance--A form approved by the department covering insurance requirements stated in the contract.

(15) Certification of Eligibility Status form--A notarized form describing any suspension, voluntary exclusion, ineligibility determination actions by an agency of the federal government, indictment, conviction, or civil judgment involving fraud, official misconduct, each with respect to the bidder or any person associated with the bidder in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, covering the three-year period immediately preceding the date of the qualification statement.

(16) Commission--The Texas Transportation Commission or authorized representative.

(17) Confidential Questionnaire--A prequalification form reflecting detailed financial and experience data.

(18) Construction contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the construction or reconstruction of a segment of the state highway system.

(19) Department--The Texas Department of Transportation.

(20) Disadvantaged business enterprise (DBE)--Has the meaning assigned by §9.202(4) [~~§9.51(10)~~] of this chapter (relating to Definitions).

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

(22) Electronic Bidding System (EBS)--The department's automated system that allows bidders to enter and submit their bid information electronically.

(23) Electronic vault--The secure location where electronic bids are stored prior to bid opening.

(24) Emergency--Any situation or condition of a designated state highway, resulting from a natural or man-made cause, that poses an imminent threat to life or property of the traveling public or which substantially disrupts or may disrupt the orderly flow of traffic and commerce.

(25) Executive director--The executive director of the Texas Department of Transportation or the director's designee not below the level of district engineer or division director.

(26) Highway improvement contract--A contract entered into under Transportation Code, Chapter 223, Subchapter A, for the construction, reconstruction, or maintenance of a segment of the state highway system, or for the construction or maintenance of a building or other facility appurtenant to a building.

(27) Historically underutilized business (HUB)--Has the meaning assigned by §9.352 [~~§9.51(16)~~] of this chapter (relating to Definitions).

(28) Joint venture--Any combination of individuals, partnerships, limited liability companies, or corporations submitting a single bid.

(29) Letting official--The executive director or any department employee empowered by the executive director to officially receive bids and close the receipt of bids at a letting.

(30) Maintenance contract--A contract entered under Transportation Code, Chapter 223, Subchapter A, for the maintenance of a segment of the state highway system.

(31) Materially unbalanced bid--A bid which generates a reasonable doubt that award to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the state.

(32) Mathematically unbalanced bid--A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

(33) Regular bid item--A bid item contained in a bid form and not designated as an alternate bid item.

(34) Routine maintenance contract--Contracts let through the routine maintenance contracting procedure to preserve and repair roadways and rights of way, with all its components, to its designed or accepted configuration.

(35) Small business enterprise (SBE)--Has the meaning assigned by §9.302 [~~§9.51(22)~~] of this chapter (relating to Definitions).

§9.13. Notice of Letting and Issuance of Bid Forms.

(a) Notice to bidders. A person may apply to have his or her name placed on a mailing list to receive the Notice to Contractors for a fee of $65 per year to cover costs of mailing the notices.

(b) Fee exemption. The following entities are not required to pay the notice subscription fee:

(1) qualified bidders approved under §9.12 of this subchapter (relating to Qualification of Bidders);

(2) other state agencies;

(3) other state departments of transportation;

(4) disadvantaged business enterprises and historically underutilized businesses;

(5) offices of the federal government; and

(6) organizations performing work under supportive service contracts awarded by the commission.

(c) Notice of Bids. The department will advertise contracts on the Electronic State Business Daily maintained and operated by the Comptroller of Public Accounts.

(d) Bid form.

(1) Bid form content. A bid form may include:

(A) the location and description of the proposed work;

(B) an approximate estimate of the various quantities and kinds of work to be performed or materials to be furnished;

(C) a schedule of items for which unit prices are requested;

(D) the time within which the work is to be completed; and

(E) the special provisions and special specifications.

(2) Form of request. A request for a bid form on a highway improvement contract may be made orally or in writing.

(e) Issuance of bid form.

(1) Construction and maintenance contracts.

(A) Issuance. Except where prohibited under subparagraph (B) of this paragraph, the department will, upon receipt of a request, issue a bid form for a construction or maintenance contract as follows:

(i) for a project on which audited financial prequalification is not waived, only to a prequalified bidder, and only if the estimated cost of the project is within that bidder's available bidding capacity; and

(ii) for a project on which audited financial qualification is waived under §9.12(c) of this subchapter, only if the estimated cost of the project is within that bidder's available bidding capacity.

(B) Non-issuance. Except as provided in subparagraph (C) of this paragraph, the department will not issue a bid form requested by a bidder for a construction or maintenance contract if at the time of the request the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits, and the contract is for a federal-aid project;

(ii) is suspended or debarred by order of the commission;

(iii) is prohibited from rebidding a specific project because of default of the first awarded contract;

(iv) has not fulfilled the requirements for qualification under §9.12 of this subchapter;

(v) is prohibited from rebidding that project as a result of having previously submitted a mathematically and materially unbalanced bid resulting in the rejection of the bid by the commission; [~~or~~]

(vi) is prohibited from rebidding that project as a result of having submitted a bid containing an error resulting in the rejection of bids by the commission; or[~~.~~]

(vii) is prohibited from rebidding that project under §9.18(b) of this subchapter (relating to Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements).

(C) Exception. The department may issue a bid form under a temporary approval to a bidder who would be ineligible under subparagraph (B)(iv) of this paragraph if the bidder has substantially complied with the requirements of §9.12 of this subchapter.

(2) Building contracts.

(A) Issuance. Except as provided in subparagraph (B) of this paragraph, the department will issue, upon request, a bid form to a bidder having complied with §9.12(e) of this subchapter.

(B) Non-issuance. The department will not issue a bid form requested by a bidder for a building contract if, at the time of the request, the bidder:

(i) is disqualified by an agency of the federal government as a participant in programs and activities involving federal assistance and benefits and the contract is a federal-aid project;

(ii) is suspended or debarred by order of the commission; or

(iii) is prohibited from bidding that project because of default of the first awarded contract.

(3) All contracts. The department will not issue a bid form for a highway improvement contract to a bidder if the bidder or a subsidiary or affiliate of the bidder has received compensation from the department to participate in the preparation of the plans or specifications on which the bid or contract is based.

§9.15. Acceptance, Rejection, and Reading of Bids.

(a) Public reading. Bids will be opened and read in accordance with Transportation Code, §223.004 and §223.005. Bids for contracts with an engineer's estimate of less than $300,000 may be filed with the district engineer at the headquarters for the district, and opened and read at a public meeting conducted by the district engineer, or his or her designee on behalf of the commission.

(b) Bids not read.

(1) The department will not accept and will not read a bid if:

(A) the bid is submitted by an unqualified bidder;

(B) the bid is in a form other than the official bid form issued to the bidder;

(C) the certification and affirmation are not signed;

(D) the bid was not in the hands of the letting official at the time and location specified in the advertisement;

(E) the bidder modifies the bid in a manner that alters the conditions or requirements for work as stated in the bid;

(F) the bid guaranty, when required, does not comply with §9.14(d) of this subchapter;

(G) the bidder did not attend a specified mandatory pre-bid conference;

(H) the bid does not include a fully completed HUB [~~historically underutilized business subcontracting~~] plan in accordance with §9.356 [~~§9.54(e)(1)~~] of this chapter when required;

(I) a computer printout bid, when used, does not have the unit bid prices entered in designated spaces, is not signed in the name of the firm or firms to whom the bid was issued, or omits required bid items or includes items not shown in the bid;

(J) the bidder was not authorized to be issued a bid form under §9.13(e) of this subchapter;

(K) the bid did not otherwise conform with the requirements of §9.14 of this subchapter;

(L) the bidder fails to properly acknowledge receipt of all addenda;

(M) the bid submitted has the incorrect number of bid items; or

(N) the bidder bids more than the maximum or less than the minimum number of allowable working days shown on the plans when working days is a bid item.

(2) If bids are submitted on the same project separately by a joint venture and one or more members of that joint venture, the department will not accept and will not read any of the bids submitted by the joint venture and those members for that project.

(3) If bids are submitted on the same project by affiliated bidders as determined under §9.12(d) of this subchapter, the department will not accept and will not read any of the bids submitted by the affiliated bidders for that project.

(c) Revision of bid.

(1) For a manually submitted bid, a bidder may change a bid price before it is submitted to the department by changing the price in the printed bid form and initialing the revision in ink;

(2) For a manually submitted bid, a bidder may change a bid price after it is submitted to the department by requesting return of the bid in writing prior to the expiration of the time for receipt of bids, as stated in the advertisement. The request must be made by a person authorized to bind the bidder. The department will not accept a request by telephone or telegraph, but will accept a properly signed facsimile request. The revised bid must be resubmitted prior to the time specified for the close of the receipt of bids.

(3) For an electronically submitted bid, a bidder may change a unit bid price in EBS and resubmit electronically to the electronic vault until the time specified for the close of the receipt of bids. Each bid submitted will be retained in the electronic vault. The electronic bid with the latest date and time stamp by the vault will be used for bid tabulation purposes.

(d) Withdrawal of bid.

(1) A bidder may withdraw a manually submitted bid by submitting a request in writing before the time and date of the bid opening. The request must be made by a person authorized to bind the bidder. The department will not accept telephone or telegraph requests, but will accept a properly signed facsimile request. Except as provided in §9.16(c) of this subchapter and §9.17(d) of this subchapter, a bidder may not withdraw a bid subsequent to the time for the receipt of bids.

(2) A bidder may withdraw an electronically submitted bid by submitting an electronic or written request to withdraw the bid. An electronic withdrawal request must be submitted using EBS. The request, whether electronic or written, must be submitted by a person who is authorized by the bidder to submit the request and received by the department before the time and date of the bid opening.

(e) Unbalanced bids. The department will examine the unit bid prices of the apparent low bid for reasonable conformance with the department's estimated prices. The department will evaluate a bid with extreme variations from the department's estimate, or where obvious unbalancing of unit prices has occurred. For the purposes of the evaluation, the department will presume the same retainage percentage for all bidders. In the event that the evaluation of the unit bid prices reveals that the apparent low bid is mathematically and materially unbalanced, the bidder will not be considered in future bids for the same project.

§9.17. Award of Contract.

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance, Rejection, and Reading of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is determined to be both mathematically and materially unbalanced;

(3) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(4) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(5) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), [~~or~~] (f), or (i) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than $300,000, if the lowest bidder withdraws its bid after bid opening, the execu-

tive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract. The lowest bidder may be considered in default and will be subject to debarment under §9.101, et seq. of this chapter.

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105 percent of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than $300,000 may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a)-(c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. In such an instance, the bid guaranty will be returned to the bidder. No compensation will be paid to the bidder as a result of this cancellation.

(i) If, for a contract with a DBE goal, the lowest bidder fails to submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within five calendar days after the date that the bids are opened, the commission may:

(1) reject all bids; or

(2) reject the bid of the lowest bidder and award the contract to the next lowest bidder.

(j) If a contract is to be awarded to the next lowest bidder under subsection (i) of this section, the next lowest bidder shall submit the DBE information required by §9.227 of this subchapter within one calendar day after the date of receipt of the notification of bid acceptance.

§9.18. [~~After~~] Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements [~~Award~~].

(a) Contract execution.

(1) Except as provided in paragraphs (2) and (3) of this subsection, within 15 days after the bidder receives written notification of the award of a contract, the [~~successful~~] bidder must execute and furnish to the department the contract with:

(A) a performance bond and a payment bond, if required and as required by Government Code, Chapter 2253, with powers of attorneys attached, each in the full amount of the contract price except as provided by subsection (c) of this section, executed by a surety company or surety companies authorized to execute surety bonds under and in accordance with state law. Department interpretations made in accordance with §9.16(b)(2) of this subchapter (relating to Tabulation of Bids) will be used to determine the contract amount for providing a performance bond and payment bond, if required, and as required by the Government Code, Chapter 2253;

(B) a certificate of insurance showing coverages in accordance with contract requirements;

(C) when required, written evidence of current good standing from the Comptroller of Public Accounts; and

(D) a list of all quoting subcontractors and suppliers.

(2) A [~~successful~~] bidder awarded [~~on~~] a routine maintenance contract will be required to provide the certificate of insurance prior to the date the contractor begins work as specified in the department's order to begin work.

(3) The [~~Within the time specified in the contract, the successful~~] bidder selected for the award of [~~on~~] a construction contract containing a DBE or SBE goal, who is not a DBE or SBE, must submit all the information required by the department in accordance with §9.227 [~~§9.53(e)~~] of this chapter (relating to Information from Bidders [~~Disadvantaged Business Enterprise (DBE) Program~~]) within the period described by §9.17(i) of this subchapter for a contract containing a DBE goal, or §9.319 [~~and §9.55(c)~~] of this chapter (relating to Contractor's Commitment Agreement [~~Small Business Enterprise (SBE) Program~~]) and §9.320 of this subchapter (relating to Contractor's Good Faith Efforts) within the period specified in the contract for a contract containing a SBE goal. The [~~successful~~] bidder must comply with paragraph (1) of this subsection within 15 days after written notification of acceptance by the department of the [~~successful~~] bidder's documentation to achieve the DBE or SBE goal.

(b) Bid guaranty. The department will retain the bid guaranty of the [~~successful~~] bidder awarded a contract until after the contract has been executed and bonded. If the [~~successful~~] bidder selected for the award of a contract with a DBE goal fails to submit the DBE information required by §9.227 of this chapter (related to Information from Bidders) within the period described by §9.17(i) of this subchapter or if the bidder awarded a contract does not comply with subsection (a) of this section, the bid guaranty will become the property of the state, not as a penalty but as liquidated damages[~~; provided, however, the department may, based on documentation submitted by the contractor, grant a 15-day extension to comply with the requirements under subsection (a)(3) of this section~~]. A bidder who forfeits a bid guaranty will not be considered in future bids for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the bid guaranty.

(c) Performance or payment bonds. For maintenance contracts the department may require that a performance or payment bond:

(1) be in an amount equal to the greatest annual amount to be paid under the contract and remain in effect for one year from the date work is resumed after any default by the contractor; or

(2) be in an amount equal to the amount to be paid the contractor during the term of the bond and be for a term of two years, renewable annually in two-year increments.

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 September 29, 2016.

TRD-201605067
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 463-8630

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SUBCHAPTER J. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

43 TAC §9.227

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter A.

§9.227. Information from Bidders.

(a) Before the execution of a contract, the apparent successful bidder must submit to the department:

(1) the names and addresses of each subcontractor, identifying DBEs that will participate in the contract;

(2) a description of the work that each DBE will perform;

(3) the dollar amount of the participation of each DBE;

(4) written documentation of the bidder's commitment to use each DBE subcontractor whose participation the bidder submits to meet a contract goal; and

(5) written confirmation from each DBE that it is participating in the contract as provided in the bidder's commitment.[~~; and~~]

[~~(6) if the contract goal is not met by DBE commitments, evidence of the bidder's good faith efforts to obtain DBE participation to meet the contract goal.~~]

(b) Each bidder shall document the bidder's good faith efforts to obtain commitment to meet the contract goal. Good faith efforts are shown if the bidder documents that:

(1) sufficient DBE participation has been obtained to meet the contract goal; or

(2) the bidder took the types of action that may be considered as good faith efforts as referenced in 49 C.F.R. Part 26, Appendix A, to obtain the commitments to meet the contract goal even though the bidder did not succeed in obtaining sufficient DBE participation to meet the contract goal.

(c) In addition to the information required under subsection (a) of this section, if the contract goal is not met by DBE commitments, the apparent successful bidder must submit to the department, before the execution of a contract, evidence of the bidder's good faith efforts to obtain DBE participation to meet the contract goal.

(d) [~~(c)~~] If the apparent successful bidder [~~to whom the contract is conditionally awarded refuses, neglects, or~~] fails to obtain the commitments to meet the DBE contract goal and fails [~~or~~] to comply with good faith efforts requirements described by subsection (b) of this section, the proposal guaranty filed with the bid is forfeited to the department.

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 September 29, 2016.

TRD-201605068
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 463-8630

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CHAPTER 11. DESIGN
SUBCHAPTER G. TRANSPORTATION ALTERNATIVES SET-ASIDE PROGRAM

43 TAC §§11.400 - 11.418

The Texas Department of Transportation (department) proposes new §§11.400 - 11.418, concerning the Transportation Alternatives Set-Aside Program.

EXPLANATION OF PROPOSED NEW SECTIONS

The proposed new sections implement the Transportation Alternatives Set-Aside Program (TA Set-Aside Program) as authorized by the federal Fixing America's Surface Transportation Act (FAST Act). The FAST Act establishes the TA Set-Aside Program as part of the Surface Transportation Block Grant, and replaces the Transportation Alternatives Program (TAP) which was established as an independent funding category under the Moving Ahead for Progress in the 21st Century Act (MAP-21). Like the TAP, the TA Set-Aside Program provides funding for a variety of alternative transportation projects. The TA Set-Aside Program is contained in 23 U. S. C. §133(h).

A majority of the concepts contained in the new sections are carried forward from the department's administrative rules concerning the TAP, and will be familiar to interested parties.

New Subchapter G is titled "Transportation Alternatives Set-Aside Program" to accurately reflect and conform to federal law.

New §11.400, Purpose, describes the purpose of the subchapter, which is to set out the policies and procedures for the implementation and administration of the TA Set-Aside Program.

New §11.401, Definitions, defines various terms used in the new subchapter, which are standard and recognizable within the transportation planning community.

New §11.402, Program Administration, briefly describes the suballocation of TA Set-Aside funds as required by federal law, and provides that each Metropolitan Planning Organization (MPO) serving an urbanized area with a population over 200,000 shall implement the TA Set-Aside Program for the award of funds in that area. The remaining TA Set-Aside funds will be distributed through a competitive process administered by the department.

New §11.403, Project Selection and Implementation by MPOs, provides general guidance for MPOs that are responsible for the review and selection of TA Set-Aside projects. The department is not mandating how the MPOs will conduct the selection process; however, project selection and implementation shall be conducted in accordance with applicable state and federal laws and regulations. Eligibility determinations shall be made by the MPO, subject to audit by the Federal Highway Administration (FHWA). MPOs are required to provide the department a list of all projects submitted during a program call, specifically identifying the selected projects, and shall include selected projects within their respective Transportation Improvement Programs (TIPs). A project sponsor requesting an adjustment to the minimum local funding match requirement based on the county's status as an economically disadvantaged county is required to obtain written authorization from the department and must include that authorization with the application submitted to the MPO. If an adjustment is granted, the adjustment percentage in effect at the time the application is submitted will be used and the county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement. Projects, or substantially similar projects, submitted during a program call administered by the MPO are not eligible for consideration under a program call administered by the department. In addition, MPOs shall report annually to the department on TA Set-Aside project applications and projects awarded TA Set-Aside funding.

New §11.404, Eligible Activities, describes those activities for which TA Set-Aside funds may be awarded under a program call administered by the department. As under the TAP, these activities include construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation; construction of infrastructure-related projects and systems to improve safe routes for non-drivers; conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and construction of infrastructure-related projects to improve the ability of students to bike and walk to school. Several types of activities that are defined as "transportation alternatives" under federal law will not be considered for funding under a program call administered by the department. The agency continues to place an emphasis on facilities for pedestrians, bicyclists and other non-motorized forms of transportation, as well as certain types of infrastructure projects formerly eligible under the Safe Routes to School Program, in an effort to encourage the development of a safe and multimodal transportation system. Projects requiring the acquisition of real property through eminent domain or condemnation are not eligible. Whether proposed as an independent project or an element of a larger project, the project must be limited to a logical unit of work and be constructible as an independent project.

New §11.405, Allowable Costs, provides that the use of federal funds is limited to construction-related project expenditures and eligible project costs incurred by the department. The costs of preliminary engineering are not allowable, and expenditures for routine operation and maintenance are not reimbursable unless specifically allowed under the applicable federal program category. These limitations were previously established under the TAP.

New §11.406, Local Funding Match, specifies that the local funding match will be a cash match or in-kind contribution provided by or through the project sponsor. In-kind contributions for development of project plans, specifications, and estimates (PS&E) may be considered part of the local funding match; however, these costs must be incurred after project selection, execution of the project agreement and issuance of the authorization to proceed. Unless specifically authorized under federal law or regulation, funds from other federal programs may not be used as a local funding match. Donated services will not be accepted as a part of the local match, but may be used to reduce the overall cost of the project. If a selected project is to be administered by the department, the project sponsor must provide the local funding match prior to the commencement of project activities for each phase of work. The local match associated with the department's administrative cost must be provided in cash.

New §11.407, Call for Nominations, describes the method by which the department will announce a call for projects and the type of information that will be included in the notice. The department may limit a program call to a particular type of eligible activity, in order to focus its efforts towards making an overall impact in a specific area.

New §11.408, Nomination Package, specifies the manner in which a project sponsor must submit its nomination and the type of information and justification that must be included in the nomination package. Project sponsors must provide persuasive evidence of support from the local community and a commitment to provide a minimum local match of 20% of the allowable project costs. If the project is located in a county that has been certified by the Texas Transportation Commission (commission) as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local match requirement. For those projects in which the commission is authorized by law to provide state cost participation, the department may adjust the match amount. If an adjustment is granted, the adjustment percentage in effect at the time the nomination package is submitted will be used and the county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement. Project submissions must be received by the published deadline and any nomination package that fails to include the required items will be considered incomplete and will not be considered for funding. The department may request supplemental information as needed to conduct project screening and evaluation.

New §11.409, Project Screening and Evaluation, describes the method by which the department will conduct the project review process. As with the TAP, the executive director will appoint a project evaluation committee consisting of department staff to review and evaluate all aspects of the project. The committee will provide selection recommendations to the director of the division responsible for administering the TA Set-Aside Program,

who will review the recommendations and provide a final list of recommended projects to the commission for consideration.

New §11.410, Finding of Ineligibility; Request for Reconsideration, provides that the department will notify project sponsors of ineligible activities proposed and the reason for the determination, and describes how a project sponsor may request a reconsideration of the determination.

New §11.411, Selection of Projects by the Commission, describes the process by which the commission will select projects for funding under the TA Set-Aside Program. In making the selection, the commission will consider: (1) recommendations from the director of the division responsible for administering the program; (2) the potential benefit to the state of the project; and (3) whether the project enhances the surface transportation system. The commission will not be bound by the department's recommendations. Funds awarded by the commission are a fixed amount and any additional funds needed for the project must be provided by the project sponsor or sought during subsequent program calls.

New §11.412, Inclusion of Selected Projects in Planning Documents, provides that the department will request that MPOs include projects selected by the commission within their respective TIPs. The department will also include all selected projects in the Statewide Transportation Improvement Program (STIP).

New §11.413, Project Implementation, describes the operational responsibilities of project sponsors, as well as the department's role, during implementation of the project. These guidelines will help ensure effective and efficient implementation of each project selected by the commission. Project sponsors are expected to implement or arrange for implementation of a selected project; however, the department, in its sole discretion, may agree to implement a project on behalf of a project sponsor. All selected projects shall be developed according to current standards and specifications and in accordance with new Subchapter G. Project sponsors must enter into a local agreement with the department and comply with all applicable state and federal requirements related to the development of federal-aid highway projects. The department will ensure that all required opportunities for public involvement have been followed and that all environmental documentation has been completed prior to funding construction activities. Funding from other federal programs may only be used when specifically authorized by federal law or regulation. Changes to the scope of work must be approved in advance by the executive director. The department is responsible for final project inspection and acceptance. If the project sponsor does not complete the project as approved, the department may seek reimbursement of the expended federal funds.

New §11.414, Payment of Costs, provides that the department will submit all requests for reimbursement to FHWA and describes the manner in which costs for locally-administered projects may be submitted for reimbursement. All project costs are borne by the project sponsor until reimbursement can be obtained. Costs incurred prior to inclusion of the project in the STIP, execution of the local agreement, and prior to state and federal authorization are not eligible for reimbursement.

New §11.415, Elimination of Project from the TA Set-Aside Program, specifies that a project will be eliminated from the program if the department is notified of opposition from the local jurisdiction in which the project is located. In addition, the executive director may eliminate a project from the program if: (1) the project sponsor fails to meet the requirements of new Subchapter G; (2) implementation of the project would require a significant deviation from the activities proposed in the nomination package; (3) the project sponsor withdraws from the project; (4) a construction contract has not been awarded within three years of project selection; (5) a local agreement has not been executed within one year of project selection; or (6) the executive director determines that federal funding may be jeopardized because the project has not been implemented or completed.

New §11.416, Project Transfer; Approval of Change, outlines the basic steps required to transfer a project to another entity in the event of a legislative action and specifies that the disposition must be approved by FHWA.

New §11.417, Maintenance and Operation; Dedication for Public Use, provides that a selected project shall be maintained and operated for the purpose for which it was approved and funded, and offers guidance regarding the expected project lifespan as it relates to the federal investment.

New §11.418, Annual Reporting to FHWA, provides that the department will report annually to FHWA on the total number of TA Set Aside project applications and the total number of projects that are awarded TA Set-Aside funding.

FISCAL NOTE

Brian Ragland, Chief Financial Officer, has determined that for each of the first five years in which the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections.

Eric Gleason, Director of Public Transportation, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Mr. Gleason 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 new sections will be a more efficient and robust transportation system through the development of various types of federally-funded transportation projects as allowed under the Transportation Alternatives Set-Aside Program. 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 new §§11.400 - 11.418 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "TA SET-ASIDE PROGRAM." The deadline for receipt of comments is 5:00 p.m. on November 14, 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 new sections, or is an employee of the department.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Title 23, United States Code, §133(h).

§11.400. Purpose.

The sections under this subchapter prescribe the policies and procedures for the implementation and administration of the Transportation Alternatives Set Aside Program (TA Set-Aside Program), as authorized by 23 U.S.C. §133(h).

§11.401. Definitions.

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

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) Executive director--The executive director of the Texas Department of Transportation or the executive director's designee.

(4) FHWA--Federal Highway Administration.

(5) Local agreement--An agreement between the project sponsor and the department which includes a commitment for the required local funding, describes the total scope and course of project activities, and outlines the responsibilities and duties of the participants.

(6) Metropolitan planning organization (MPO)--The organization or policy board of an organization created and designated under 23 U.S.C. §134, and 49 U.S.C. §5303, to make transportation planning decisions for the metropolitan planning area and carry out the metropolitan planning process.

(7) Project--An undertaking to implement or construct an eligible activity at a specific location or locations, or, if the context so implies, the particular activity so implemented or constructed.

(8) Project sponsor--An eligible entity as described by 23 U.S.C. §133(h), that nominates a particular project for consideration, exercises jurisdiction over the geographic area in which that project is located, and commits to the project's development, implementation, construction, maintenance, management, and financing.

(9) State--The State of Texas or any of its political subdivisions.

(10) Statewide Transportation Improvement Program (STIP)--A four year short-range program developed by the department as a compilation of all metropolitan transportation improvement programs, together with rural transportation improvement programs, that include recommendations from rural planning organizations and department districts for the areas of the state that are outside of the boundaries of a metropolitan planning organization, including transportation between cities.

(11) Surface transportation system--An interconnected surface transportation network for moving people and goods using various combinations of transportation modes.

(12) Transportation Improvement Program (TIP)--A short-range program developed by each metropolitan planning organization in cooperation with the department and public transportation operators that covers a four-year period and contains a prioritized listing of all projects proposed for federal funding and regionally significant projects proposed for state, federal, and local funding in a metropolitan area.

§11.402. Program Administration.

(a) The state is required to suballocate, in accordance with 23 U.S.C. §133(h), a part of its TA Set-Aside apportionment to urbanized areas with populations over 200,000.

(b) Each MPO serving an urbanized area with a population over 200,000 shall implement the TA Set-Aside Program for the award of funds suballocated within that area. Section 11.403 of this subchapter (relating to Project Selection and Implementation by MPOs) applies only to the use of those TA Set-Aside funds.

(c) For TA Set-Aside funds not covered by subsection (b) of this section, the commission will select projects through a competitive process administered by the department. Sections 11.404 - 11.417 of this subchapter apply only to the use of those TA Set-Aside funds.

§11.403. Project Selection and Implementation by MPOs.

(a) This section applies only to an MPO serving an urbanized area with a population over 200,000 and the award of TA Set-Aside funds suballocated for such an urbanized area.

(b) The MPO, in consultation with the department, shall develop a competitive process to allow project sponsors to submit project applications for funding that achieve the objectives of the TA Set-Aside Program.

(c) The MPO shall coordinate determinations regarding project eligibility, subject to audit by the FHWA.

(d) The MPO, in consultation with the department, shall conduct project selection in accordance with all applicable federal and state laws and regulations.

(e) Following the conclusion of the competitive process, the MPO shall provide to the department a list of all projects submitted during the program call on which the selected projects are identified, and immediately shall begin the process required to include the selected projects in its TIP.

(f) The MPO shall conduct project implementation in accordance with all applicable federal and state laws and regulations.

(g) If a project is located on state right-of-way, the project sponsor is responsible for securing a land-use permit from the department prior to construction.

(h) A project sponsor requesting an adjustment to the minimum local funding match requirements based on the county's status as an economically disadvantaged county is required to obtain written authorization from the department, in the form prescribed by the department, and must include the form with the application submitted to the MPO. If an adjustment is granted, the adjustment percentage in effect for the county at the time the application is submitted to the MPO will be used. The county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement.

(i) Projects, or substantially similar projects, submitted during a program call administered by the MPO are not eligible for consideration under a program call administered by the department.

(j) Not later than November 15 of each year, the MPO shall submit to the department a report that describes:

(1) the number of project applications received by the MPO for the preceding federal fiscal year (the period of October 1 through September 30), including the aggregate cost of the projects for which applications are received and the types of projects to be carried out, expressed as percentages of the MPO's total apportionment for TA Set-Asides; and

(2) the number of projects selected for funding by the MPO for the preceding federal fiscal year, including the aggregate cost and location of projects selected.

§11.404. Eligible Activities.

(a) During a program call administered by the department, TA Set-Aside funds may be awarded for any of the following activities:

(1) construction of on-road and off-road trail facilities for pedestrians, bicyclists, and other non-motorized forms of transportation, including sidewalks, bicycle infrastructure, pedestrian and bicycle signals, traffic calming techniques, lighting and other safety-related infrastructure, and transportation projects to achieve compliance with the Americans with Disabilities Act of 1990;

(2) construction of infrastructure-related projects and systems that will provide safe routes for non-drivers, including children, older adults, and individuals with disabilities to access daily needs;

(3) conversion and use of abandoned railroad corridors for trails for pedestrians, bicyclists, or other non-motorized transportation users; and

(4) construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school, including sidewalk improvements, traffic calming and speed reduction improvements, pedestrian and bicycle crossing improvements, on-street bicycle facilities, off-street bicycle and pedestrian facilities, secure bicycle parking facilities, and traffic diversion improvements in the vicinity of schools.

(b) A project that will require the acquisition of real property through the exercise of eminent domain or condemnation is not eligible for participation in the TA Set-Aside Program.

(c) Whether proposed as an independent project or as an element of a larger transportation project, the project must be limited to a logical unit of work and be constructible as an independent project.

§11.405. Allowable Costs.

(a) Costs are allowable only if they are necessary construction-related project expenditures that are eligible for reimbursement under applicable statutes and regulations.

(b) The costs of preliminary engineering, including planning, design, and plans, specifications, and estimates, are not allowable costs.

(c) Eligible pre-construction costs incurred by the department are reimbursable. All other pre-construction costs are the responsibility of the project sponsor.

(d) Expenditures for routine operation and maintenance are not allowable costs unless specifically allowed under the individual federal category for which the project qualifies.

§11.406. Local Funding Match.

(a) The local funding match is a cash match or in-kind contribution provided by or through the project sponsor. An in-kind contribution may include only actual and documented costs incurred by the project sponsor for the development of project plans, specifications, and estimates that would otherwise be eligible for reimbursement under applicable statutes and regulations.

(b) Costs incurred prior to execution of the local agreement or prior to federal and state approval and authorization to proceed are not eligible for consideration as in-kind contributions.

(c) Funds from other federal programs may be used as a local funding match only when specifically authorized by federal law or regulation.

(d) Donated services may not be accepted as a local funding match, but may be used to reduce the overall cost of the project.

(e) If a project selected by the commission is implemented by the department, the project sponsor must provide the local funding match prior to the commencement of project activities for each phase of work.

(f) Projects selected by the commission will include an administrative cost for the department's oversight. The local funding match associated with this administrative cost must be provided in cash.

§11.407. Call for Nominations.

(a) The department will issue a notice of a call for project nominations by publication in the *Texas Register.*

(b) The notice will include information regarding the content of the nomination package, the procedures applicable to the program call, and the specific evaluation criteria to be used during the project selection process.

(c) All or a portion of a call for nominations may be designated for a particular eligible activity.

§11.408. Nomination Package.

(a) To nominate a project during a program call administered by the department, the project sponsor must submit its nomination in the form prescribed by the department.

(b) The nomination package must present persuasive evidence of support for the proposed project from the communities in which it would be implemented and include a commitment to provide a local funding match of at least 20% of the allowable costs of the project.

(c) If the project is located in a county that has been certified by the commission as an economically disadvantaged county, the nomination package may include a request for adjustment to the minimum local funding match requirement. For those projects in which the commission is authorized by law to provide state cost participation, the department may adjust the amount required by subsection (b) of this section. If an adjustment is granted, the adjustment percentage in effect for the county at the time the program call is initiated will be used. The county must remain eligible for the adjustment until the date the project sponsor enters into the local agreement.

(d) A complete nomination package must be received by the department not later than the specified deadline published in the *Texas Register.* A nomination package that fails to include any of the items specified in this section or the respective program call is considered to be incomplete and will not be considered for funding. The department may request supplemental information as needed to conduct project screening and evaluation.

§11.409. Project Screening and Evaluation.

(a) The executive director will appoint a project evaluation committee consisting of department staff to review, evaluate, and make recommendations on projects submitted during a program call administered by the department.

(b) The committee will screen each project to determine whether it is eligible for funding under applicable federal and state law and whether it meets technical standards established by applicable law and accepted professional practice.

(c) The committee will evaluate the benefits of each project that is determined to be eligible under subsection (b) of this section or §11.410 of this subchapter based on the specific selection criteria set forth in the program call.

(d) The committee will provide project selection recommendations and supporting documentation to the director of the division responsible for administering the TA Set-Aside Program.

(e) The director of the division responsible for administering the TA Set-Aside Program will review the recommendations and supporting documentation submitted by the committee and provide a final list of recommended projects to the commission for consideration.

§11.410. Finding of Ineligibility; Request for Reconsideration.

(a) The department will by certified mail, return receipt requested, notify the project sponsor of ineligible activities proposed and the reason for the determination.

(b) A request for reconsideration of a finding of ineligibility may be initiated only by a letter from the nominating entity to the executive director setting forth reasons in support of a finding of eligibility. The letter requesting reconsideration must be received by the department not later than 15 days after the day that nominating entity received the department's notification, as established by the return receipt.

(c) The determination of the executive director in response to the request for reconsideration is final.

§11.411. Selection of Projects by the Commission.

(a) The commission, by written order, will select projects for funding under the TA Set-Aside Program based on:

(1) recommendations from the director of the division responsible for administering the TA Set-Aside Program;

(2) the potential benefit to the state of the project; and

(3) whether the project enhances the surface transportation system.

(b) The commission is not bound by project selection recommendations provided by the department.

(c) The department will notify the project sponsor of the selection.

(d) The commission will specify a fixed amount of TA Set Aside funds for each project. Project costs in excess of this amount are the responsibility of the project sponsor. The project sponsor may seek additional funds through the TA Set Aside Program in subsequent program calls.

(e) A project that is not selected must be resubmitted to receive consideration during subsequent program calls.

§11.412. Inclusion of Selected Projects in Planning Documents.

(a) If a project selected by the commission is to be implemented in a metropolitan area, the department will request that the MPO for that area immediately begin the process required to include the selected project in its TIP.

(b) The department will also immediately begin the process required to include all selected projects in the STIP.

§11.413. Project Implementation.

(a) The project sponsor shall implement or arrange for implementation of each project selected by the commission in accordance with statutory requisites and contracting procedures applicable to the type and character of the project. The department, in its sole discretion, may agree to implement a project on behalf of a project sponsor.

(b) All projects shall be developed:

(1) to current standards and specifications established or recognized by the federal government and the department; and

(2) in accordance with this subchapter.

(c) All project sponsors must enter into a local agreement and shall comply with all federal and state procedures and requirements applicable to development of federal-aid transportation projects.

(d) Before funding any construction activities, the department will ensure that required opportunities for public involvement have been provided and proper environmental documentation has been completed.

(e) Funds from other federal programs may be used only if specifically authorized by federal law or regulation. Private cash donations may be accepted if authorized by law.

(f) Any change in the scope of work that was specified in the nomination package and approved by the commission must have the advance written approval of the executive director.

(g) The department is responsible for the inspection and final acceptance of all projects selected by the commission and for certification of project completion.

(h) If the project sponsor does not complete the project as originally approved by the commission, the department may seek reimbursement of the expended federal funds from the sponsor.

§11.414. Payment of Costs.

(a) The department will submit all requests for reimbursement of allowable costs to FHWA.

(b) A project sponsor must use the forms and procedures specified by the department to request reimbursement of allowable costs incurred.

(c) For locally administered projects, the entire project cost is borne by the project sponsor until reimbursement can be obtained from FHWA for eligible activities.

(d) Costs incurred prior to the inclusion of the project in the STIP, execution of the local agreement, or federal and state approval and authorization to proceed are not eligible for reimbursement.

§11.415. Elimination of Project from the TA Set-Aside Program.

(a) A project will be eliminated from participation in the TA Set-Aside Program if prior to the execution of the local agreement, the governing body of a municipality or county in which project activities are proposed, by resolution, order, or other official action, notifies the department of its opposition to the project.

(b) The executive director may eliminate a project or a portion of a project from participation in the TA Set-Aside Program if:

(1) the project sponsor fails to satisfy any requirement of this subchapter;

(2) implementation of the project would involve significant deviation from the activities proposed in the nomination package and approved by the commission;

(3) the project sponsor withdraws from participation in the project;

(4) a construction contract has not been awarded or construction has not been initiated within three years after the date that the commission selected the project;

(5) a local agreement is not executed within one year after the date that the commission selected the project; or

(6) the executive director determines that federal funding may be lost because the project has not been implemented or completed.

§11.416. Project Transfer; Approval of Change.

(a) If legislative action requires transfer of the project to another entity, the department may terminate the existing project agreement and execute an agreement with the responsible entity.

(b) A transfer under subsection (a) of this section must receive approval from FHWA.

§11.417. Maintenance and Operation; Dedication for Public Use.

(a) A project selected by the commission shall be maintained and operated for the purpose for which it was approved and funded and for a period of time that is commensurate with the amount of federal investment in the project.

(b) A project selected by the commission shall be dedicated for public use for the greater of:

(1) a period that is commensurate with the amount of federal investment in the project; or

(2) 10 years, if the amount of federal investment in the project is $1 million or less, or 20 years, if the amount of federal investment is more than $1 million.

(c) If at any time the project sponsor can no longer maintain and operate the project for its intended purpose, the sponsor shall return the federal share used for the project in accordance with current deferral recapture procedures.

§11.418. Annual Reporting to FHWA.

The department will annually submit a report to FHWA that describes:

(1) the total number of project applications received for the federal fiscal year (the period of October 1 through September 30), including the aggregate cost of the projects for which applications are received and the types of projects to be carried out, expressed as percentages of the total apportionment for TA Set-Asides; and

(2) the total number of projects selected for funding for each federal fiscal year, including the aggregate cost and location of projects selected.

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 September 29, 2016.

TRD-201605069
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 463-8630

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CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) proposes amendments to §16.105, concerning Transportation Programs, and §§16.152 - 16.154, and 16.160, concerning Transportation Funding.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill (HB) 20, 84th Legislature, Regular Session, 2015, requires changes be made to several of the planning and programming processes that the Texas Transportation Commission (commission) and the department use to prioritize and finance transportation projects. HB 20 also requires the commission to adopt a performance-based planning and programming process with performance metrics, measures and scoring for project selection.

In response to HB 20, and as a part of the implementation effort, the department created the Planning Organization Stakeholder Committee (POSC) in July of 2015. The POSC is comprised of representatives from seven metropolitan planning organizations as well as representatives from seven department districts. The objectives of the committee are to: (1) support the development of an implementation strategy focused on the programming, performance measure, and planning components of HB 20, along with coordination with legislative and stakeholder committees; (2) provide input for, and comments on, the department's HB 20 Initial Report and Preliminary Report; (3) assist in the development and implementation of updates to transportation funding categories and formulas; and (4) provide review and input to the development of the department's cash flow projections.

In addition to the POSC, the department formed a Core Strategy Team (CST) charged with reviewing and updating the agency's mission, vision, values and goals in order to set the foundation for the performance measures and metrics to be used in a performance-based planning process. The new values, vision, mission and goals developed by the CST were adopted by the commission on February 25, 2016. The new goals and objectives are as follows: (1) deliver the right projects - implement effective planning and forecasting processes that deliver the right projects on-time and on-budget; (2) focus on the customer - people are at the center of everything we do; (3) foster stewardship - ensure efficient use of state resources; (4) optimize system performance - develop and operate an integrated transportation system that provides reliable and accessible mobility, and enables economic growth; (5) preserve our assets - deliver preventive maintenance for the department's system and capital assets to protect our investments; (6) promote safety - champion a culture of safety; and (7) value our employees - respect and care for the well-being and development of our employees.

The proposed amendments are necessary to implement the performance-based planning requirements of HB 20, integrate the department's new strategic goals and objectives, and respond to considerations of the POSC regarding improvements to the planning and forecasting processes related to the Unified Transportation Program (UTP). As the department continues to collaborate with planning partners, legislative committees and the POSC in the development of the specific performance measures, metrics and processes that will guide project selection criteria and funding distributions, additional rule changes are expected.

Amendments to §16.105(b)(1) clarify that the financial constraint associated with the development of the UTP is based on the planning cash flow forecast prepared and published in accordance with §16.152(a). This clarification is necessary in light of proposed amendments to §16.152, which provide for the use of separate financial forecasts for purposes of planning and letting.

Amendments to §16.105(b)(3) remove specific requirements related to the organization of the UTP document. This change will provide the department with increased flexibility to organize and publish the UTP in the most user-friendly and readily-accessible format.

Amendments to §16.105(d)(1)(A) revise the project selection criteria to incorporate language contained in the department's new strategic goals and objectives, as adopted by the commission in February 2016.

Amendments to §16.105(d)(2) address the requirements of Transportation Code §201.9991, as added by HB 20, with respect to the department's use of performance metrics and measures to evaluate and rank projects listed in the UTP. The amendments specify that the department will consider performance metrics and measures to evaluate and rank the priority of each project listed in the UTP. Furthermore, projects will be ranked using a performance-based scoring system and the scoring system will be used for prioritizing projects for which financial assistance is sought from the commission. The amendments also provide that the scoring system must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state.

Amendments to §16.105(e) provide guidance with regard to what constitutes a "major change" for purposes of updating the UTP, which requires a formal update to the program and an opportunity for public involvement. The amendments also require the department to present information regarding the development of the UTP and any updates to the commission the month prior to final adoption of the UTP and any updates. These changes are intended to focus public engagement on significant modifications to UTP.

Amendments to §16.105(f) modify the process for administratively revising the UTP and describe the types of changes that qualify as administrative revisions to the program. The existing process for handling administrative revisions is overly cumbersome and difficult to administer.

Amendments to §16.152 distinguish between the two types of financial forecasts to be used by the department for purposes of planning and letting. Amendments to §16.152(a) provide that the long-range financial forecast currently known as the cash flow forecast will be identified as the planning cash flow forecast. Amendments to §16.152(b) require the chief financial officer to issue a base cash flow forecast to be used for the development of the letting schedule, which will cover a period of not less than two years following the date the forecast is issued. The distinction between these two financial forecasts is critical since the planning cash flow forecast will include additional funding projections beyond those contained in the base cash flow forecast. In addition, the base cash flow forecast will provide constraints to the letting of projects funded under allocation programs, as further described in proposed amendments to §16.154(d). Amendments to §16.152(f) reflect recent changes in nomenclature within the department; specifically, the Finance Division is now referred to as the Financial Management Division. Amendments to §16.152(g) specify that the planning cash flow forecast is to be used for development of the UTP.

Amendments to §16.153(a)(9) are necessary due to the transition from the Transportation Alternatives Program to the Transportation Alternatives Set-Aside Program, as required by federal law.

Amendments to §16.153(c) address the requirements of Transportation Code §201.9991, as added by HB 20, and provide that the commission will use a performance-based process, subject to the mandates of state and federal law, to determine the amount to be allocated to each program funding category for the appropriate period of time in order to achieve established performance outcomes. The amendments also clarify the distinction between highway program funding categories and program funding categories for other modes of transportation and transportation infrastructure, for purposes of determining funding allocations.

Amendments to §16.154(a)(3) specify that funds under Category 4 (Statewide Connectivity Corridor Projects) will be allocated to districts as an allocation program for specific corridors as opposed to specific projects. As in the past, the allocation will be based on an engineering analysis of three corridor types. However, if applicable to the particular corridor type, the commission will also consider the formula used for allocating funds under Category 2 (Metropolitan and Urban Corridor Projects). The amendments further provide that, with regard to mobility corridors, the analysis will include congestion considerations throughout the state. These changes emphasize the need for a corridor-level plan for connectivity while also providing flexibility to allocate funds to districts for use on projects along the commission-approved corridors.

Amendments to §16.154(d) provide that the letting of projects funded within allocation programs is subject to the constraints established by the base cash flow forecast described in §16.152(b). The current language implies that all projects within UTP allocation programs could be let without constraint. In light of the proposed amendments to §16.152, which distinguish between the two different forecasts governing the planning and letting processes, this change was needed to clarify that the base cash flow forecast is the constraint for letting projects within allocation programs.

Amendments to §16.154(e) revise the definition of "project," for purposes of listing projects in the UTP, to mean a connectivity or new capacity roadway project. This change is consistent with the definitions contained in Transportation Code §201.9901, as added by HB 20.

Amendments to §16.154(f) clarify that the department may not exceed the planning cash flow forecast in distributing funds in the twelve categories of the UTP and may not exceed the base cash flow forecast in distributing funds for purposes of letting. These changes are necessary in light of the amendments to §16.152, as previously described.

Amendments to §16.160(a) specify that changes in UTP category funding levels may also result from consideration of performance results. These revisions are necessary to comply with Transportation Code §201.9991, as added by HB 20, which requires the commission to establish a performance-based process for setting funding levels for the categories of projects in the UTP.

Amendments to §16.160(b) update references to the planning cash flow forecast in light of the amendments to §16.152, as previously described. Amendments to this section also ensure that performance results are considered in a determination to increase or decrease the allocation of funds to one or more categories. These changes are necessary to comply with Transportation Code §201.9991, as added by HB 20, which requires the commission to establish a performance-based process for setting funding levels for the categories of projects in the UTP.

Amendments to §16.160(d) provide that significant changes to the base cash flow forecast may result in changes to the letting schedule in order to maintain fiscal constraint. The amendments also specify that projects eligible for letting include all authorized projects or allocation programs covered in the UTP and STIP

and that specific projects will be advanced or delayed relative to the order of listed priorities in the applicable programs, fund source eligibility and the completion of project benchmarks sufficient to proceed to construction. These changes are needed to clarify the relationship between the letting schedule and the base cash flow forecast, as explained in the proposed amendments to §16.152, and how changes to the letting schedule will be handled in relation to the changing base cash flow forecast. In addition, this language supports the provisions of Transportation Code §201.809, as amended by HB 20, which require the department to include performance metrics and measures in the evaluation of project delivery for projects in the letting schedule. The preference for allocation of funding increases has been eliminated, as this process is to be governed by the use of performance results in accordance with the provisions of Transportation Code §201.9991, as added by HB 20.

Amendments to §16.160(f) reflect recent changes in nomenclature within the department, as previously described.

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. Lauren Garduño, Interim Director, Transportation Planning and Programming 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. Garduño 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 clarity on how the department is incorporating the newly-adopted strategic goals and performance-based planning and forecasting processes required by HB 20 into the department's UTP and letting schedule. 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 §§16.105, 16.152 - 16.154, and 16.160 may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Transportation Projects Rules" The deadline for receipt of comments is 5:00 p.m. on November 14, 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 C. TRANSPORTATION PROGRAMS

43 TAC §16.105

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, §201.809, which requires the commission to adopt rules to develop and implement a performance-based planning and programming process and performance metrics and performance measures; §201.991, which requires the commission to adopt rules related to the unified transportation program; and §201.9991, which requires the commission to adopt rules to prioritize and approve projects included in the statewide transportation plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.809, 201.991 and 201.9991.

§16.105. Unified Transportation Program (UTP).

(a) General. The department will develop a unified transportation program (UTP) that covers a period of ten years to guide the development and authorize construction and maintenance of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. In developing the UTP, the department will collaborate with local transportation entities and public transportation operators as defined by 23 C.F.R. Part 450.

(b) Requirements. The UTP will:

(1) be financially constrained for planning and development purposes based on the planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts) and estimate funding levels and the allocation of funds to each district, metropolitan planning organization (MPO), and other authorized entity for each year in accordance with Subchapter D of this chapter (relating to Transportation Funding);

(2) list all projects and programs that the department intends to develop, or on which the department intends to initiate construction or maintenance, during the UTP period, and the applicable funding category to which a project or program is assigned, after consideration of the:

(A) statewide long-range transportation plan (SLRTP);

(B) metropolitan transportation plans (MTP);

(C) transportation improvement programs (TIP);

(D) MPO annual reevaluations of project selection in MTPs and TIPs, if any, in accordance with subsection (c) of this section;

(E) statewide transportation improvement programs (STIP);

(F) recommendations of rural planning organizations (RPO) as provided in this subchapter; and

(G) list of major transportation projects in accordance with §16.106 of this subchapter (relating to Major Transportation Projects); and

[~~(3) be organized by funding category, district, mode of transportation, and the year a project is scheduled for development or letting; and~~]

(3) [~~(4)~~] designate the priority ranking within a program funding category of each listed project in accordance with subsection (d)(2) of this section.

(c) MPO annual reevaluation of project selection. An MPO may annually reevaluate the status of project priorities and selection in its approved metropolitan transportation plan (MTP) and transportation improvement program (TIP) and provide a report of any changes to the department at the times and in the manner and format established by

the department. The reevaluation must be consistent with criteria applicable to development of the MTP and TIP in accordance with federal requirements.

(d) Project selection.

(1) The commission will consider the following criteria for project selection in the UTP as applicable to the program funding categories described in §16.153 of this chapter (relating to Funding Categories):

(A) the potential of the project to meet transportation goals for the state, including efforts to:

(i) maintain a safe transportation system for all transportation users;

(ii) optimize system performance by mitigating congestion, enhancing connectivity and mobility, improving the reliability of the system, facilitating the movement of freight and international trade, and fostering economic competitiveness through infrastructure investments [~~address travel congestion~~];

(iii) maintain and preserve system infrastructure [~~connect Texas communities~~]; and

(iv) accomplish any additional transportation goals for the state identified in the statewide long-range transportation plans as provided in §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(B) the potential of the project to assist the department in attainment of the measurable targets for the transportation goals identified in subparagraph (A) of this paragraph; and

(C) adherence to all accepted department design standards as well as applicable state and federal law and regulations.

(2) The department will consider performance metrics and measures to evaluate and [~~establish criteria to~~] rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category, using a performance-based scoring system, and classified as tier one, tier two, or tier three for ranking purposes. The scoring system will be used for prioritizing projects for which financial assistance is sought from the commission and must account for the diverse needs of the state so as to fairly allocate funding to all regions of the state. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(3) The commission will determine and approve the final selection of projects and programs to be included in the UTP, except for the selection of federally funded projects by an MPO serving in an area designated as a transportation management area (TMA) as provided in §16.101(n) of this subchapter (relating to Transportation Improvement Program (TIP)). A federally funded project selected by an MPO designated as a TMA will be approved by the commission, subject to:

(A) satisfaction of the project selection criteria in paragraph (1) of this subsection;

(B) compliance with federal law; and

(C) the district's and MPO's allocation of funds for the applicable years.

(e) Approval of unified transportation program (UTP). Not later than August 31 of each year, the commission will adopt the unified transportation program for the next fiscal year. The UTP may be updated more frequently if necessary to authorize a major change to one or more funding allocations or project listings in the most recent UTP. For the purpose of updating the UTP, the term "major change" refers to the authorization of new projects or the revision of project funding allocations which exceed 10 percent of the project cost or $500,000, whichever is greater, occurring in non-allocation program categories, excluding revisions to local funding contributions and projects designated under miscellaneous state and federal programs. The foregoing does not apply to project funding allocations in Category 4 Statewide Connectivity Corridor Projects and Category 12 Strategic Priority as described in §16.153(a) of this subchapter (relating to Funding Categories) and all revisions to projects funded in those categories must be first included in an update to the UTP approved by the commission. The department will present information regarding the development of the UTP and any updates to the commission the month prior to final adoption of the UTP and any updates. The department will hold a hearing prior to:

(1) final adoption of the UTP and any updates; and

(2) approval of any adjustments to the program resulting from changes to the allocation of funds under §16.160 of this chapter (relating to Funding Allocation Adjustments).

(f) Administrative revisions. The UTP may be administratively revised at any time and for any reason that does not constitute a major change as described in subsection (e) of this section, with the exception of project funding allocations in Category 4 Statewide Connectivity Corridor Projects and Category 12 Strategic Priority as described in subsection (e).

[~~(1) The UTP may be administratively revised at any time for minor or nondiscretionary changes to funding allocations and project listings, including the changes specified in this paragraph.~~]

[~~(A) A project may be added to the UTP, or a project within the UTP may be moved forward or delayed if:~~]

[~~*(i)* the status of a listed project or projects change, and if the moved or added project can be developed and let during a two-year period within the district's or MPO's allocated funds in the applicable program funding category for that period;~~]

[~~*(ii)* the project and funding for the project is specifically identified in a commission minute order for pass-through toll financing; or~~]

[~~*(iii)* the project and funding for the project is specifically identified in a federal or state legislative act or appropriation, including a federal earmark.~~]

[~~(B) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer all or a portion of its allocated funds either within a program funding category or between program funding categories during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable program funding category as listed in the UTP is not exceeded or reduced.~~]

[~~(C) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer all or a portion of its allocated funds from a program funding category to another district or MPO during the first two years of the~~

~~UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable program funding category for each district and MPO as listed in the UTP is not exceeded or reduced.]~~

~~[(D) A local government may provide additional funding contribution or participation for a project.]~~

~~[(E) A district may transfer all or a portion of its allocated funds in a program funding category to an adjoining district for a project that extends across the districts' common boundary.]~~

~~[(F) A district or MPO, subject to the mandates of state and federal law and specific requirements contained in other sections of this chapter for selection of projects and management of funds, may transfer any unspent excess allocated funds remaining in a program funding category at the end of a fiscal year to the same program funding category for the next fiscal year.]~~

~~[(G) Projects that are listed only for informational purposes in program funding categories identified as allocation programs in §16.154 of this chapter (relating to Transportation Allocation Funding Formulas) may be added to or deleted from the categories.]~~

~~[(2) The department, an MPO, an RPO, or a public transportation operator as defined by 23 C.F.R. Part 450 may request an administrative revision of the UTP. A revision request by a public transportation operator must be applicable to projects in the public transportation portion of the UTP and, if the public transportation operator is located within the boundaries of an MPO or RPO, it must obtain consent of the applicable MPO or RPO prior to making the request.]~~

~~[(3) If an administrative revision is requested, the department will, in coordination with the other affected parties, determine whether a revision is appropriate and may, consistent with the authority to select projects under subsection (d) of this section, develop a revised list of projects for the applicable period.]~~

~~[(4) An administrative revision under this subsection is not an update or adjustment to which subsections (e), (g), and (h) of this section apply.]~~

~~[(5) The department will incorporate an administrative revision into the UTP if the request complies with the requirements of this subsection and compliance is confirmed by the chief planning and project officer. If a requested revision is a minor or nondiscretionary change to a funding allocation or project listing in the UTP, but does not comply with the specific requirements described for changes in paragraph (1) of this subsection, the requested revision may not be incorporated into the UTP unless it is also approved by the chief financial officer. In determining whether to approve the administrative revision request, the chief financial officer shall consider the fiscal impact of the requested revision in the context of the current cash flow forecast.]~~

~~[(6) Department staff will provide a written report to the commission within two months after the end of each quarter identifying all administrative revisions implemented under this subsection during that quarter.]~~

(g) Public involvement during development of the unified transportation program.

(1) The department will seek to effectively engage the general public and stakeholders in development of the UTP.

(2) The department will hold public meetings throughout the state that will cover each district during development of the UTP as early as the department determines is feasible to assure public input into the process. The department will also hold public meetings throughout applicable areas of the state during development of each update to the program that will cover each district affected by the update. The department will publish notice of each public meeting as appropriate to maximize attendance at the meeting.

(3) The department will report its progress on the program and provide an opportunity for a free exchange of ideas, views, and concerns relating to project selection, funding categories, level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria. A representative from each district will attend each public meeting applicable to the district and be available for the discussion.

(4) The department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants.

(h) Public involvement prior to final adoption. The department, prior to adoption of the unified transportation program and approval of any updates to the program, will hold at least one statewide hearing on its project selection process including the UTP's funding categories, the level of funding in each category, the allocation of funds for each year of the program, and the relative importance of the various selection criteria.

(1) The department will publish a notice of the applicable hearing in the *Texas Register* a minimum of 15 days prior to it being held and will inform the public where to send any written comments.

(2) The department will accept written public comments for a period of at least 30 days after the date the notice appears in the *Texas Register*.

(3) A copy of the proposed project selection process, the UTP, and any adjustments to the plan, as applicable, will be available for review at the time the notice of hearing is published at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin. A copy will also be available on the department website.

(i) Publication. The department will publish the entire approved unified transportation program, updates, adjustments, and administrative revisions together with any summary documents highlighting project benchmarks, priorities, and forecasts on the department's website. The documents will also be available for review at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin.

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 September 29, 2016.

TRD-201605070
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 463-8630

SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §§16.152 - 16.154, 16.160

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, §201.809, which requires the commission to adopt rules to develop and implement a performance-based planning and programming process and performance metrics and performance measures; §201.991, which requires the commission to adopt rules related to the unified transportation program; and §201.9991, which requires the commission to adopt rules to prioritize and approve projects included in the statewide transportation plan.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.809, 201.991 and 201.9991.

§16.152. Cash Flow Forecasts [~~Forecast~~].

(a) Planning cash flow forecast [~~Forecast~~]. On or before September 1 of each year, the department's chief financial officer will issue a planning cash flow forecast for each source of funding that covers a period of not less than the 20 years following the date the forecast is issued and is based on the funding assumptions developed under §16.151 of this subchapter (relating to Long-Term Planning Assumptions).

(b) Base cash flow forecast. On or before September 1 of each year, the department's chief financial officer will issue a base cash flow forecast for each source of funding to guide the development of the letting schedule that covers a period of not less than two years following the date the forecast is issued.

(c) [~~(b)~~] Requirements. Each [~~The~~] forecast must identify:

(1) all state and federal sources of funding available for transportation projects and projects involving aviation, public transportation, rail, and the state's waterways and coastal waters, including bond proceeds; and

(2) any limitations imposed by state or federal law on the use of the identified source.

(d) [~~(c)~~] First two years. The first year or two years of each [~~the~~] forecast, as appropriate, must be based on the amounts appropriated by the legislature to the department for that period.

(e) [~~(d)~~] Updates. The department's chief financial officer will update each [~~the~~] forecast more frequently than annually if significant changes in the department's funding occur.

(f) [~~(e)~~] Publication. Each [~~cash flow~~] forecast and update will be available on the department's website for viewing by the public and the documents will be available for review at each of the district offices and at the department's Financial Management [~~Finance~~] Division offices in Austin.

(g) [~~(f)~~] Uses of planning cash flow forecast. The commission will use the planning cash flow forecast to estimate funding levels for each year of the unified transportation program as provided in §16.105 of this chapter (relating to Unified Transportation Program (UTP)), to determine the annual amount of funding in each of the program funding categories described in §16.153 of this subchapter (relating to Funding Categories), and to allocate funding to the districts, metropolitan planning organizations, and other authorized entities in accordance with §16.154 of this subchapter (relating to Transportation Allocation Funding Formulas).

(h) [~~(g)~~] Funding definition. In this subchapter, unless the context clearly indicates otherwise, "funds" or "funding" means the estimates of federal, state, and local money reasonably expected to be available for expenditure on transportation projects and projects involving aviation, public transportation, rail, and the state's waterways and coastal waters during the relevant period.

§16.153. Funding Categories.

(a) Highway program funding categories. The ten-year unified transportation program (UTP) described in §16.105 of this chapter (relating to Unified Transportation Program (UTP)) will contain the following 12 program funding categories for highway related projects:

(1) Category 1 Preventive Maintenance and Rehabilitation - preventive maintenance and rehabilitation on the existing state highway system, including:

(A) Preventive maintenance - minor roadway modifications to improve operations and safety; and

(B) Rehabilitation - installation, rehabilitation, replacement, and maintenance of pavement, bridges, traffic control devices, traffic management systems, and ancillary traffic devices;

(2) Category 2 Metropolitan and Urban Corridor Projects - mobility and added capacity projects along a corridor that improve transportation facilities in order to decrease travel time and the level or duration of traffic congestion, and safety, maintenance, or rehabilitation projects that increase the safe and efficient movement of people and freight in metropolitan and urbanized areas;

(3) Category 3 Non-Traditionally Funded Transportation Projects - transportation related projects that qualify for funding from sources not traditionally part of the state highway fund including state bond financing under programs such as Proposition 12 (General Obligation Bonds), Texas Mobility Fund, pass-through toll financing, unique federal funding, regional toll revenue, and local participation funding;

(4) Category 4 Statewide Connectivity Corridor Projects - mobility and added capacity projects on major state highway system corridors which provide statewide connectivity between urban areas and corridors, to create a highway connectivity network composed of the Texas Highway Trunk System, National Highway System, and connections from those two systems to major ports of entry on international borders and Texas water ports;

(5) Category 5 Congestion Mitigation and Air Quality Improvement - congestion mitigation and air quality improvement area projects to address attainment of a national ambient air quality standard in the nonattainment areas of the state;

(6) Category 6 Structures Replacement and Rehabilitation - replacement and rehabilitation of deficient existing bridges located on the public highways, roads, and streets in the state, construction of grade separations at existing highway-railroad grade crossings, and rehabilitation of deficient railroad underpasses on the state highway system;

(7) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - transportation needs within the boundaries of designated metropolitan planning areas of metropolitan planning organizations located in a transportation management area;

(8) Category 8 Safety - safety related projects both on and off the state highway system including the federal Highway Safety Improvement Program, Railway-Highway Crossing Program, Safety Bond Program, and High Risk Rural Roads Program;

(9) Category 9 Transportation Alternatives - transportation related activities as described in Chapter 11, Subchapter G [~~F~~], of this title (relating to the Transportation Alternatives Set-Aside Program);

(10) Category 10 Supplemental Transportation Projects -transportation related projects that do not qualify for funding in other categories, including landscape and aesthetic improvement, erosion control and environmental mitigation, construction and rehabilitation of roadways within or adjacent to state parks, fish hatcheries, and similar facilities, replacement of railroad crossing surfaces, maintenance of railroad signals, construction or replacement of curb ramps for accessibility to pedestrians with disabilities, and miscellaneous federal programs;

(11) Category 11 District Discretionary - projects eligible for federal or state funding selected at the district engineer's discretion; and

(12) Category 12 Strategic Priority - projects with specific importance to the state including those that generally promote economic opportunity, increase efficiency on military deployment routes or to retain military assets in response to the federal military base realignment and closure reports, and maintain the ability to respond to both man-made and natural emergencies.

(b) Program funding categories for other modes of transportation and transportation infrastructure. The UTP will contain the following program funding categories for aviation, public transportation, rail, and the state's waterways and coastal waters projects:

(1) Aviation Capital Improvement Program - projects based on the anticipated funding levels of the Federal Aviation Administration Airport Improvement Program and the Texas Aviation Facilities Development Program for general aviation airport development in Texas;

(2) Public transportation- projects based on the anticipated funding levels for public transportation including fixed route city bus service, rural demand response service, special transit service for elderly and persons with disabilities, and intercity bus service from city to city;

(3) Rail - rail related projects including light rail, freight rail, passenger rail, and high-speed rail; and

(4) State waterways and coastal waters - water related projects including lands, easements, and rights of way for the widening, deepening, and expansion of the main channel of the Gulf Intracoastal Waterway (GIWW), including beneficial use projects of dredged material, and other maritime related projects.

(c) Determination of funding allocations. The commission will use a performance-based process to determine, subject to the mandates of state and federal law, the amount of funds to be allocated to each program funding category described in subsection (a) of this section for the appropriate period of time, in order to achieve established performance outcomes. The commission will determine, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title, [~~for programs and projects described in subsection (b) of this section,~~] the amount of funds to be allocated to each program funding category described in subsection (b) of this section for the appropriate period of time.

§16.154. Transportation Allocation Funding Formulas.

(a) Formula allocations. The commission will, subject to the mandates of state and federal law, allocate funds from program funding Categories 1, 2, 4, 5, 7, 9, and 11, as described in §16.153 of this subchapter (relating to Funding Categories), to the districts and metropolitan planning organizations (MPO) as follows:

(1) Category 1 Preventive Maintenance and Rehabilitation - will be allocated to all districts as an allocation program according to the following formulas:

(A) Preventive maintenance.

(i) Ninety-eight percent for roadway maintenance with 65 percent based on on-system lane miles, and 33 percent based on the pavement distress score Pace factor; and

(ii) Two percent for bridge maintenance based on square footage of on-system span bridge deck area;

(B) Rehabilitation. Thirty-two and one half percent based on three-year average lane miles of pavement distress scores less than 70, 20 percent based on on-system vehicle miles traveled per lane mile, 32.5 percent based on equivalent single axle load miles for on-system, off-system, and interstate, and 15 percent based on the pavement distress score Pace factor;

(2) Category 2 Metropolitan and Urban Corridor Projects - will be allocated to MPOs for specific projects in the following manner:

(A) 87 percent to MPOs operating in areas that are transportation management areas, according to the following formula: 30 percent based on total vehicle miles traveled on and off the state highway system, 17 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 10 percent based on lane miles on-system, 14 percent based on truck vehicle miles traveled on-system, 7 percent based on percentage of census population below the federal poverty level, 15 percent based on congestion, and 7 percent based on fatal and incapacitating vehicle crashes;

(B) 13 percent to MPOs operating in areas that are not transportation management areas, according to the following formula: 20 percent based on total vehicle miles traveled on and off the state highway system, 25 percent based on estimated population within the boundaries of the metropolitan planning area using data derived from the most recent census provided by the U.S. Bureau of the Census (census population), 8 percent based on lane miles on-system, 15 percent based on truck vehicle miles traveled on-system, 4 percent based on percentage of census population below the federal poverty level, 8 percent based on centerline miles on-system, 10 percent based on congestion, and 10 percent based on fatal and incapacitating vehicle crashes;

(3) Category 4 Statewide Connectivity Corridor Projects - will be allocated to districts as an allocation program for specific corridors [~~projects~~] selected by the commission based on engineering analysis of [~~projects on~~] three corridor types and, if applicable to the particular corridor type, considering the formula specified in subsection (a)(2) of this section:

(A) Mobility corridors - congestion considerations throughout the state [~~in areas that are not in the boundaries of an MPO~~];

(B) Connectivity corridors - two-lane roadways requiring upgrade to four-lane divided roadways to connect the urban areas of the state; and

(C) Strategic corridors - strategic corridors on the state highway network that provide statewide connectivity;

(4) Category 5 Congestion Mitigation and Air Quality Improvement - will be allocated to districts and MPOs as an allocation program for projects in a nonattainment area population weighted by ozone and carbon monoxide pollutant severity;

(5) Category 7 Metropolitan Mobility and Rehabilitation (TMA) - will be allocated to MPOs operating in areas that are transportation management areas as an allocation program based on the applicable federal formula;

(6) Category 9 Transportation Alternatives- a portion of the funds in this category will be allocated to MPOs serving urbanized areas with populations over 200,000 as an allocation program based on the areas' relative share of population, unless FHWA approves a joint request from the department and the relevant MPOs to use other factors in determining the allocation; and

(7) Category 11 District Discretionary - will be allocated to all districts as an allocation program based on state legislative mandates, but if there is no mandate or the amount of available funding in this category exceeds the minimum required by a mandate, the funding allocation for this category or the excess funding, as applicable, will be allocated according to the following formula: 70 percent based on annual on-system vehicle miles traveled, 20 percent based on annual on-system lane miles, and 10 percent based on annual on-system truck vehicle miles traveled. The commission may supplement the funds allocated to individual districts on a case-by-case basis to cover project cost overruns.

(b) Pace factor calculation. For purposes of subsection (a)(1) of this section, the Pace factor is a calculation used to adjust funding among districts according to increases or decreases in a district's need to improve its pavement distress scores. It will slow the rate of improvement for districts with the highest condition scores and accelerate the rate of improvement for districts with the lowest condition scores. The Pace factor is calculated by:

(1) determining the district with the highest distress score;

(2) determining the deviation of a district's distress score from the highest score;

(3) totaling the deviations for all districts as determined by paragraph (2) of this subsection.

(c) Non-formula allocations. The commission, subject to the mandates of state and federal law and specific requirements contained in other chapters of this title for programs and projects described in subsection (a) of this section, will determine the amount of funding to be allocated to a district, metropolitan planning organization, political subdivision, governmental agency, local governmental body, recipient of a governmental transportation grant, or other eligible entity from each of the following program funding categories described in §16.153 of this subchapter:

(1) Category 3 Non-Traditionally Funded Transportation Projects for specific projects;

(2) Category 6 Structures Replacement and Rehabilitation as an allocation program;

(3) Category 8 Safety Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program;

(4) Category 9 Transportation Alternatives- of the remaining funds in this category, a portion will be allocated to certain areas of the state, for specific projects, based on the areas' relative share of the population, and a portion may be allocated in any area of the state for specific projects or transferred to other eligible federal programs, as authorized by law;

(5) Category 10 Supplemental Transportation Projects generally funded as an allocation program with some specific projects designated under miscellaneous federal programs;

(6) Category 12 Strategic Priority for specific projects;

(7) Aviation Capital Improvement Program;

(8) Public transportation;

(9) Rail; and

(10) State waterways and coastal waters.

(d) Allocation program. For the purposes of this chapter, the term "allocation program" refers to a type of program funding category identified in the unified transportation program for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district, selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and, subject to the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter (relating to Cash Flow Forecasts), let to contract with the cost of each project to be deducted from the allocated funds available for that category.

(e) Listing of projects. The department will list the projects that the department intends to develop and let during the ten-year unified transportation program (UTP) under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), and reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. For the purpose of listing projects in the UTP, "project" means a connectivity or new capacity roadway project. The term does not include a safety project, bridge project, federal discretionary project, maintenance project, preservation project, transportation alternatives project, or locally funded project. [~~does not include preventive maintenance and rehabilitation under Category 1 Preventive Maintenance and Rehabilitation as described in subsection (a) of this section.~~]

(f) Limitation on distribution. In distributing funds to the districts, metropolitan planning organizations, and other entities described in subsections (a) and (c) of this section, the department may not exceed the planning cash flow forecast prepared and published in accordance with §16.152(a) [~~§16.152~~] of this subchapter (relating to Cash Flow Forecasts). In developing and distributing funds for purposes of letting, the department may not exceed the base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter. [~~Forecast).~~]

(g) Formula revisions. The commission will review and, if determined appropriate, revise both the formulas and criteria for allocation of funds under subsections (a) - (c) of this section at least as frequently as every four years.

(h) Supplemental allocations. The commission may supplement the funds allocated to individual districts under subsections (a)(1) and (7) of this section in response to special initiatives, safety issues, or unforeseen environmental factors. Supplemental funding under this subsection is not required to be allocated proportionately among the districts and is not required to be allocated according to the formulas specified in subsections (a)(1) and (7) of this section. In determining whether to allocate supplemental funds to a particular district, the commission may consider safety issues, traffic volumes, pavement widths, pavement conditions, oil and gas production, well completion, or any other relevant factors.

§16.160. Funding Allocation Adjustments.

(a) Changes in funding. Changes in the allocation of funds under §16.153 or §16.154 of this subchapter (relating to Funding Categories and Transportation Allocation Funding Formulas, respectively) may result from significant changes in the department's funding and consideration of performance results.

(b) Allocation revisions. If a significant change in funding is identified by the department's chief financial officer in an updated planning cash flow forecast prepared and published in accordance with §16.152(a) of this subchapter (relating to Cash Flow Forecasts), the commission may revise the allocation of funds to each program funding category or from the program funding categories to the districts and metropolitan planning organizations (MPO) and may approve:

(1) a specific percentage increase or decrease in the allocation of funds and, subject to the mandates of state and federal law, apply the percentage change equally to each program funding category; or

(2) an increase or decrease in the allocation of funds to one or more program funding categories, after considering the:

(A) total amount of the change;

(B) priority of the funding category based on performance results and the category's relationship to the stated commission goals as provided in the statewide long-range transportation plan under §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP));

(C) mandates of state and federal law; and

(D) best interests of the state.

(c) Adjustment of programs. After the commission approves a change in the allocation of funds to a program funding category under subsection (b) of this section, the funds allocated to individual districts and MPOs will be adjusted and the unified transportation program, statewide transportation improvement program, and metropolitan transportation improvement programs will be revised in accordance with the applicable change in funding. Specific projects will be advanced or delayed in the order of the planning organization's and department's listed priorities in the applicable programs.

(d) Letting. If a significant change in funding is identified by the department's chief financial officer in an updated base cash flow forecast prepared and published in accordance with §16.152(b) of this subchapter (relating to Cash Flow Forecasts), the chief financial officer may revise the letting schedule to maintain the constraint of the base cash flow forecast. Projects eligible for letting include all authorized projects or allocation programs covered in the unified transportation program or the statewide transportation improvement program. Specific projects will be advanced or delayed relative to the order of listed priorities in the applicable programs, fund source eligibility, and the completion of project benchmarks sufficient to proceed to construction. [~~Preference for allocation of funding increases. If the allocation of funds to a district or MPO is reduced under subsection (c) of this section, any subsequent increase in the allocation of funds to the applicable program funding category will be allocated first to the accounts of the districts and MPOs that were previously reduced.~~]

(e) Public involvement. The department will hold at least one statewide public hearing regarding a proposed change in the allocation of funds to a program funding category under this section with an available comment period of at least 30 days after the date the hearing notice appears in the *Texas Register* in accordance with the procedures set forth in §16.105(h) of this chapter (relating to Unified Transportation Program (UTP)).

(f) Publication. Documents describing each change in the allocation of funds to a program funding category will be available for viewing by the public on the department's website and at each of the district offices and at the department's Financial Management [~~Finance~~] Division offices in Austin.

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 September 29, 2016.

TRD-201605071
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 13, 2016
For further information, please call: (512) 463-8630

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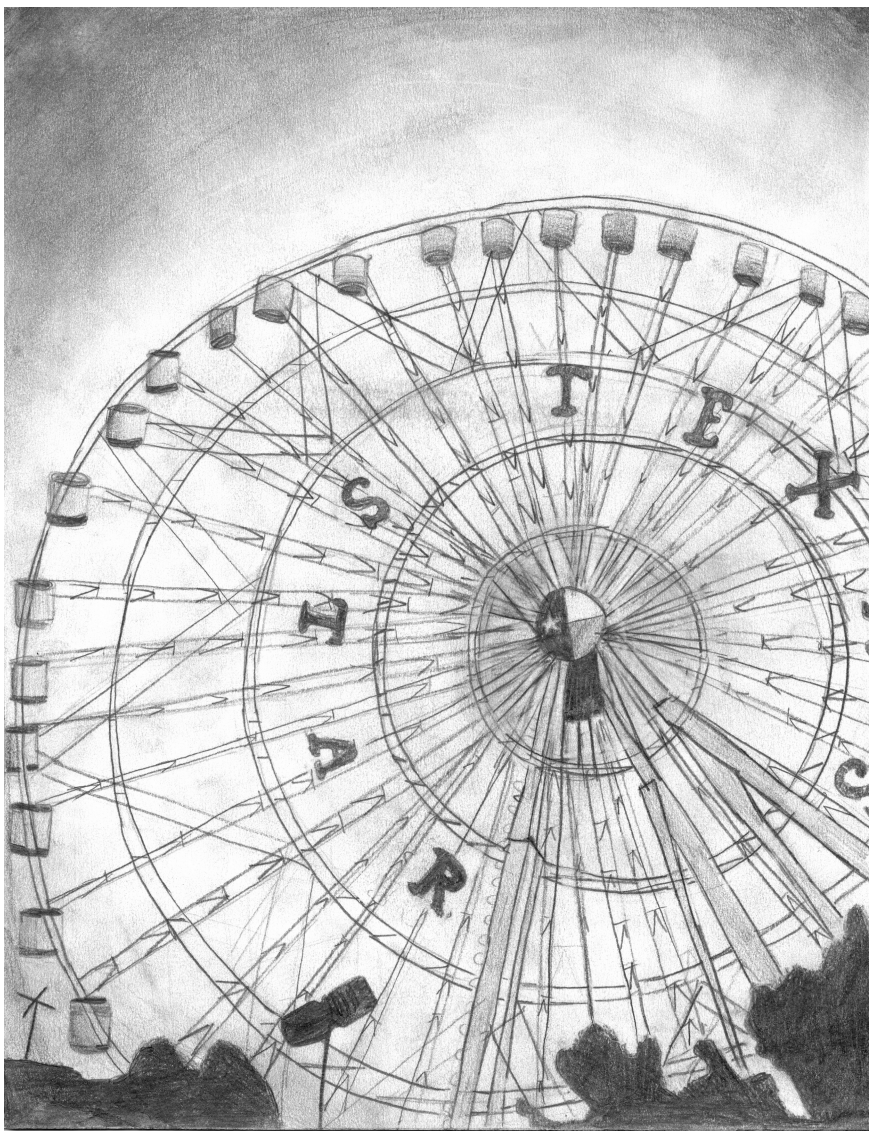
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ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

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

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §351.4

The Texas Health and Human Service Commission (HHSC) adopts new §351.4,concerning the HHSC Executive Council. The new rule is adopted with changes to the proposed text as published in the July 29, 2016, issue of the *Texas Register* (41 TexReg 5485). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

Section 1.03 of Senate Bill 200, 84th Texas Legislature, Regular Session, establishes the Health and Human Services Commission (HHSC) Executive Council and requires the HHSC Executive Commissioner to adopt rules for the operation of the council.

The new rule §351.4 describes the operations of the Executive Council, including purpose, definitions, tasks, meetings, and membership.

COMMENTS

The 30-day comment period ended August 29, 2016. During this period, HHSC received a comment from a member of the former HHSC Council. A summary of comment relating to the rule and HHSC's responses follows.

Comment: Commenter expressed concern with the proposed two-year term for members of the public. With the former HHSC Council, it typically took a full year (four meetings) of a member's term before the member was completely oriented. A two-year term would allow for only one year of productive service. Commenter recommends a three-year term.

Response: HHSC agrees and will revise the rule as the commenter suggests.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and §531.0051, which requires the Executive Commissioner of HHSC to adopt rules governing the operation of the Executive Council.

§351.4. Health and Human Services Commission Executive Council.

(a) Statutory authority. Texas Government Code §531.0051 establishes the Health and Human Services Commission Executive Council and requires the Executive Commissioner to adopt rules for its operation.

(b) Applicability of Texas Government Code Chapter 2110. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 2110.

(c) Applicability of Texas Government Code Chapter 551. The Health and Human Services Commission Executive Council is not subject to Texas Government Code Chapter 551.

(d) Definitions. For the purpose of this section, the following terms are defined as follows:

(1) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(2) Executive Council--The Health and Human Services Commission Executive Council.

(3) Health and Human Services system--All state agencies and departments under and including the Health and Human Services Commission.

(4) HHSC--The Health and Human Services Commission.

(e) Purpose. The Executive Council is established to receive public input and advise the Executive Commissioner regarding the operation of the Health and Human Services system.

(f) Tasks. The Executive Council reviews policies related to the operation of the HHS system.

(1) The Executive Council seeks and receives public comment on:

(A) proposed rules;

(B) recommendations of advisory committees established under Subchapter B of this Chapter (relating to Advisory Committees);

(C) legislative appropriations request or other documents related to the appropriations process;

(D) the operation of health and human services programs; and

(E) other items the Executive Commissioner determines appropriate.

(2) The Executive Council does not have the authority to make administrative or policy decisions.

(g) Membership. The members of the Executive Council serve at the pleasure of the Executive Commissioner.

(1) The Executive Council is composed of:

(A) the Executive Commissioner;

(B) the director of each HHSC division established under Texas Government Code §531.008(c);

(C) the commissioner of each Health and Human Services system agency;

(D) other individuals appointed by the Executive Commissioner.

(2) When appointing members under paragraph (1)(D) of this subsection, the Executive Commissioner will make every effort to ensure that those appointments result in Executive Council membership that includes:

(A) a balanced representation of a broad range of health and human services industry and consumer interests; and

(B) representation from broad geographic regions of the State of Texas.

(3) Members appointed under paragraph (1)(D) of this subsection are subject to the restrictions applicable to service on the Executive Council provided by Texas Government Code §531.006(a-1).

(4) Terms. Members appointed under paragraph (1)(D) of this subsection will serve three-year terms.

(A) No more than half of the terms of members appointed under paragraph (1)(D) of this subsection shall expire in a single state fiscal year.

(B) If more than half of the members appointed under paragraph (1)(D) of this subsection have terms beginning in the same state fiscal year, members will draw for two- or three-year terms. Subsequent terms will be for a period of two years.

(C) Members may serve a maximum of two consecutive terms.

(h) Presiding officer. The Executive Commissioner serves as the chair of the Executive Council.

(i) Meetings. The Executive Council meets at the call of the Executive Commissioner, at least quarterly.

(1) A meeting of the individual members of the Executive Council that occurs in the ordinary course of Health and Human Services system operations is not a meeting of the Executive Council, and the provisions of subsection (j) of this section do not apply.

(2) Live video transmissions of each meeting will be publicly available through the HHSC website.

(j) Public notice. The Executive Council will give public notice of the date, time, and place of each meeting.

(k) Quorum. A majority of the members of the Executive Council constitutes a quorum for the transaction of business.

(l) Reimbursement and compensation. Members appointed under subsection (g)(1)(D) of this section may not receive compensation but are entitled to reimbursement for travel expenses incurred while conducting the business of the Executive Council, as provided by the Texas General Appropriations Act.

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 October 3, 2016.

TRD-201605079
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: October 23, 2016
Proposal publication date: July 29, 2016
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 27. TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION

SUBCHAPTER H. CREATION OF PEST MANAGEMENT ZONES

4 TAC §§27.801 - 27.804

The Texas Department of Agriculture (Department) adopts new Title 4, Part 1, Chapter 27, Subchapter H, Creation of Pest Management Zones, §§27.801 - 27.804, without changes, to the August 5, 2016, issue of the *Texas Register* (41 TexReg 5666). New Subchapter H is adopted to implement rules related to the creation of pest management zones under Chapter 80 of the Texas Agriculture Code (the Code) in order for the Texas Citrus Pest and Disease Management Corporation, Inc. (Corporation), a Texas nonprofit corporation, the recognized entity by the Department, to plan, carry out, and operate suppression programs to manage and control citrus pests and diseases in this state under the supervision of the Department.

A public hearing was held by the Department regarding the proposal and three members of the public provided comment forms indicating that they were in support of the rules and provided no further comment.

The Department received no written or oral comments.

The new rules are adopted under Chapter 80 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the Texas Citrus Pest and Disease Management Corporation to plan, carry out, and operate suppression programs to manage and control pests and diseases in citrus plants in the state under the supervision of the Department as provided by Chapter 80.

The Code affected by the adoption is Texas Agriculture Code, Chapter 80.

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 September 27, 2016.

TRD-201605040

Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: October 17, 2016
Proposal publication date: August 5, 2016
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.19

The Texas State Securities Board adopts an amendment to §115.19, concerning Texas crowdfunding portal registration and activities, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4751).

The rule permits a registered portal to handle investor funds if the funds are held in a segregated account pursuant to §139.25(f), which is being concurrently adopted. Mandatory recordkeeping requirements apply when a segregated account is used by a portal.

Texas crowdfunding portals will be allowed to handle investor funds for certain small securities offerings where engaging an escrow agent may be difficult or cost prohibitive.

A comment letter dated August 22, 2016, was received from MassVenture Inc., joined by truCrowd Inc., and TEN. All the signatories are registered Texas crowdfunding portals. The commenters expressed strong support for the proposals that would allow a portal to handle investor funds through a segregated account, establish guidelines and obligations for the portal in conducting its client-fund activities, and require registration of all persons with signature authority over the segregated account.

The commenters requested additional clarity to the portal's disbursement obligations when using a segregated account that requires the portal to "act to the advantage of and in the best interests of the investors and the issuer," indicating that it may be a problem to simultaneously fulfill the best interest of both parties. Staff responded that when a general dealer or Texas crowdfunding portal handle funds in a segregated account, it must avoid conflicts of interest or self-dealing and remain objective and neutral and act at all times to the advantage of and in the best interests of all parties to the transaction.

Since the dealer or portal closes the offering, it is responsible for prudent processing, safeguarding, and accounting for funds raised in the offering and entrusted to them by prospective purchasers and investors, and is responsible for seeing that all requirements relating to the use of the segregated account set out in Rule 115.19 and Rule 139.25 are met, all instructions in the segregated account agreement are followed, and any other conditions met before funds are disbursed from the segregated account.

The funds in a segregated account can be disbursed only to those persons entitled to receive them by the segregated account agreement and §139.25(f)(1). If a dispute arises concerning all or part of the funds, the portion in dispute should be kept separate until the dispute is resolved while the undisputed portion is distributed appropriately to the person entitled to receive it. However, if it is unclear to whom funds belong, or a dispute among claimants exists, then the dealer or portal should hold the disputed funds until the dispute is resolved and disburse any undisputed portions. If the dispute ultimately cannot be resolved among the claimants, then the dealer or portal may need to submit the issue of ownership to a court for resolution.

Given the foregoing, the Board declined to make any changes suggested by the commenters and adopted the subsection as proposed.

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

The adopted amendment affects Texas Civil Statutes, Articles 581-12, 581-13, 581-14, 581-15, and 581-18.

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

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

TRD-201605074
John Morgan
Securities Commissioner
State Securities Board
Effective date: October 20, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-8301

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.25

The Texas State Securities Board adopts an amendment to §139.25, concerning intrastate crowdfunding exemption, without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4752).

The rule permits a segregated account to be used in lieu of an escrow account when the maximum offering amount in a crowdfunding offering is $100,000 or less; defines "escrow account" and "segregated account"; sets requirements for handling funds in a segregated account; mandates additional disclosure statements when a portal handles funds in a segregated account; and requires a written agreement between the issuer and the dealer/portal when a segregated account is used; requires a filing by the issuer; and requires all signatories on the segregated account to be registered with the Securities Commissioner.

The rule facilitates certain small securities offerings by businesses in the state by removing a potential obstacle to using the intrastate crowdfunding exemption.

A comment letter dated August 22, 2016, was received from MassVenture Inc., joined by truCrowd Inc., and TEN. All the sig-

natories are registered Texas crowdfunding portals. The commenters expressed strong support for the proposal that would allow a portal to handle investor funds through a segregated account, establish guidelines and obligations for the portal in conducting its client-fund activities, and require registration of all persons with signature authority over the segregated account. The commenters noted that the proposals would provide a number of advantages over the use of an escrow account to companies choosing to make their offerings pursuant to the Texas intrastate crowdfunding exemption while still ensuring investor funds are protected.

The commenters requested that the Board consider raising the $100,000 cap for use of a segregated account to somewhere in the $250,000 to $495,000 range. Staff responded that the published proposal was designed to overcome the difficulty smaller offerings (ones well under the $100,000 cap) were encountering in obtaining escrow account services from financial institutions, which was preventing these small issuers from using the existing rules to raise capital. Of the states that have adopted some type of intrastate crowdfunding, two-thirds require the investor funds be deposited into an escrow account. The national crowdfunding provisions enacted by Congress and the Securities and Exchange Commission also require funds be deposited into escrow. Given the foregoing, the Board disagreed with the commenters but may re-visit this suggestion in the future.

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

The adopted amendment affects Texas Civil Statutes, Articles 581-7 and 581-14.

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 September 30, 2016.

TRD-201605075
John Morgan
Securities Commissioner
State Securities Board
Effective date: October 20, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 305-8301

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.3

The State Board of Education (SBOE) adopts an amendment to §74.3, concerning required curriculum. The amendment is adopted without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5902) and will not be republished. The section establishes the description of a required secondary curriculum. The adopted amendment updates the rule to add the newly adopted Personal Financial Literacy course to the list of courses a school district is required to offer at the high school level.

REASONED JUSTIFICATION. House Bill 2662, 83rd Texas Legislature, 2013, amended the Texas Education Code (TEC), §28.0021, to require school districts and open-enrollment charter schools offering a high school program to provide a one-half credit elective course in personal financial literacy. At the April 2014 meeting, the SBOE prioritized the new course to be developed and requested that Texas Education Agency staff move forward with the development of Texas Essential Knowledge and Skills for the one-half credit elective course in personal financial literacy.

A committee of secondary and postsecondary educators and business and industry representatives was convened in Austin in May 2015 for a face-to-face meeting to begin working on recommendations for the personal financial literacy elective course. The committee conducted three additional virtual meetings to finalize its first draft recommendations. The SBOE adopted new 19 TAC Chapter 113, Texas Essential Knowledge and Skills for Social Studies, Subchapter C, High School, §113.49, Personal Financial Literacy (One-Half Credit), Adopted 2016, in January 2016.

The adopted amendment updates §74.3(b)(2)(D) to add Personal Financial Literacy to the list of social studies courses a school district is required to offer at the high school level in accordance with the TEC, §28.0021.

The amendment was approved by the SBOE for first reading and filing authorization at its July 22, 2016, meeting and for second reading and final adoption at its September 16, 2016 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2017 - 2018 school year. The earlier effective date will ensure that board rules align with statute in a timely manner.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; the TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and the TEC, §28.0021, which requires each school district and open-enrollment charter school that offers a high school program to provide an elective course in personal financial literacy that meets the requirements for a one-half elective credit.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.0021.

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 October 3, 2016.

TRD-201605093
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 23, 2016
Proposal publication date: August 12, 2016
For further information, please call: (512) 475-1497

CHAPTER 112. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SCIENCE
SUBCHAPTER D. OTHER SCIENCE COURSES

19 TAC §§112.61 - 112.68

The State Board of Education (SBOE) adopts amendments to §§112.61-112.66 and new §112.67 and §112.68, concerning Texas Essential Knowledge and Skills (TEKS) for science. The amendments to §§112.61-112.63 and 112.66 and new §112.67 and §112.68 are adopted without changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5904) and will not be republished. The amendments to §112.64 and §112.65 are adopted with changes to the proposed text as published in the August 12, 2016, issue of the *Texas Register* (41 TexReg 5904). Sections 112.61-112.66 establish implementation of the subchapter and identify the requirements for advanced placement (AP) courses. The adopted amendments and new sections update course titles for AP courses, modify the amount of credit that could be earned for these courses, and add new AP Physics courses to align with courses recently revised by the College Board.

REASONED JUSTIFICATION. Rules in 19 TAC Chapter 112, Subchapter D, identify the requirements for high school advanced placement, international baccalaureate, and career and technical education science courses.

Section 112.61 was amended to remove an implementation date that has passed. The adopted amendments to §§112.62-112.66 modify the amount of credit that could be earned for AP courses to eliminate the range of credits. The section titles were updated to indicate the change in credit as well as align with AP course titles where necessary. In addition, §112.65 was modified to update the recommended prerequisites and add a corequisite.

In response to public comment, §112.64, Advanced Placement (AP) Physics 1: Algebra Based (One Credit), was amended at adoption to remove Physics and Algebra II from the recommended prerequisites and add as a recommended corequisite a mathematics course listed in 19 TAC §74.12(b)(2)(B).

Also at adoption, a non-substantive technical edit was made to §112.65, Advanced Placement (AP) Physics 2: Algebra Based (One Credit), to change the word *co-requisite* to *corequisite.*

Adopted new 19 TAC §112.67, Advanced Placement (AP) Physics C: Electricity and Magnetism (One Credit), and §112.68, Advanced Placement (AP) Physics C: Mechanics (One Credit), add new College Board courses for science credit and reflect the level of the courses and the credit to be awarded.

The amendments and new sections were approved by the SBOE for first reading and filing authorization at its July 22, 2016, meeting and for second reading and final adoption at its September 16, 2016, meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments and new sections for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2017-2018 school year. The earlier effective date will allow school districts to award credit for appropriate AP science courses beginning in the 2016-2017 school year.

SUMMARY OF COMMENTS AND RESPONSES. Following is a summary of the public comments received and the corresponding responses regarding the proposed revisions to 19 TAC Chapter 112, Subchapter D.

Comment. One school district administrator and one representative from the College Board expressed concern with the recommended prerequisites proposed in §112.64(a). The commenters stated that the prerequisites do not align with those suggested in the AP Physics 1 Curriculum Framework.

Response. The SBOE agreed that the prerequisites should be modified to allow students who have not completed Physics and Algebra II to enroll in the course. The SBOE took action to amend §112.64(a) to read, "General Requirements. Students can be awarded one credit for successful completion of this course. Recommended prerequisites: Algebra I, Geometry. Recommended corequisite: a mathematics course listed in §74.12(b)(2)(B) of this title (relating to Foundation High School Program)."

STATUTORY AUTHORITY. The amendments and new sections are adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE by rule to identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under the TEC, §28.002.

CROSS REFERENCE TO STATUTE. The amendments and new sections implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§112.64. Advanced Placement (AP) Physics 1: Algebra Based (One Credit).

(a) General Requirements. Students can be awarded one credit for successful completion of this course. Recommended prerequisites: Algebra I, Geometry. Recommended corequisite: a mathematics course listed in §74.12(b)(2)(B) of this title (relating to Foundation High School Program).

(b) Content Requirements. Content requirements for Advanced Placement (AP) Physics are prescribed in the College Board Publication *Advanced Placement Course Description: Physics,* published by The College Board.

§112.65. Advanced Placement (AP) Physics 2: Algebra Based (One Credit).

(a) General Requirements. Students can be awarded one credit for successful completion of this course. Recommended prerequisites: Advanced Placement (AP) Physics 1 or a comparable physics introductory course. Recommended corequisite: precalculus or an equivalent course.

(b) Content Requirements. Content requirements for AP Physics are prescribed in the College Board Publication *Advanced Placement Course Description: Physics,* published by The College Board.

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

Filed with the Office of the Secretary of State on October 3, 2016.

TRD-201605083
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 23, 2016
Proposal publication date: August 12, 2016
For further information, please call: (512) 475-1497

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 227. PROVISIONS FOR EDUCATOR PREPARATION CANDIDATES

SUBCHAPTER A. ADMISSION TO EDUCATOR PREPARATION PROGRAMS

19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, 227.20

The State Board for Educator Certification (SBEC) adopts amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20, concerning provisions for educator preparation candidates. The amendments to §§227.1, 227.5, 227.19, and 227.20 are adopted without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4756) and will not be republished. The amendments to §§227.10, 227.15, and 227.17 are adopted with changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4756). The sections establish requirements for admission to an educator preparation program (EPP). The adopted amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 include changes to provide clarification to questions that Texas Education Agency (TEA) staff has received from EPPs and applicants to EPPs. In addition, the adopted amendments clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state.

REASONED JUSTIFICATION. The SBEC rules in 19 TAC Chapter 227, Subchapter A, provide for rules that establish requirements for admission to an EPP. The Texas Education Code (TEC), §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state. The TEC, §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The adopted amendments include changes to provide clarification to questions that TEA staff has received from EPPs and applicants to EPPs after revisions to the chapter were adopted by the SBEC in December 2015.

General Provisions

In accordance with the TEC, §21.044, language to require EPPs to provide information regarding the performance over time of the EPP was added to 19 TAC §227.1(c) in December 2015. After the adoption of the amendment, EPPs asked how many years of performance data needed to be provided. Language has been added that specifies five years of performance data be provided by EPPs to clarify the new standard and ensure consistency among EPPs in the state.

Definitions

After the definition of *applicant* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on this definition. The definition of *applicant* has been amended to clarify that an applicant is an individual seeking admission to an EPP for "any class of certificate." This adopted amendment clarifies the definition and ensures consistency among EPPs in the state.

The definition of *candidate* in 19 TAC §227.5 has been amended to align the definition with the same definition that was included as part of the proposed rule actions to 19 TAC Chapters 228, 229, and 230, published in the Proposed Rules section of the August 26, 2016, issue of the *Texas Register.* Also, definitions for *certification category* and *certification class* have been added in 19 TAC §227.5 so that the definitions align with the language used in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter D, Types and Classes of Certificates Issued, and 19 TAC Chapter 233, Categories of Classroom Teaching Certificates. The definitions include "also known as certification field" so that the common term for categories and classes can continue to be used by TEA staff and EPPs. To align the definitions across all chapters, these changes have been made in 19 TAC §227.5 with conforming changes made throughout the chapter.

In accordance with the TEC, §21.0441, language to require an applicant to an EPP to pass an appropriate content matter examination to be eligible for an exception to the minimum grade point average (GPA) requirement was added to 19 TAC §227.5 in December 2015. After the adoption of the amendment, EPPs asked for clarification regarding the difference between a content matter examination and a content certification examination. A definition for *content certification examination* has been added to this section so that the term can be used in the appropriate sections of this chapter. The adopted definition also aligns with the definition used in other chapters of the TAC.

After the definition of *contingency admission* was amended in 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on which admission requirements needed to be met for an applicant to be considered for contingent admission. The definition of *contingency admission* has been amended to clarify that an applicant must meet all of the admission requirements specified in 19 TAC §227.10 with the exception of a pending degree being conferred.

After the definition of *post-baccalaureate program* was added to 19 TAC §227.5 in the December 2015 adoption, EPPs asked for clarification on the difference between a post-baccalaureate program at an institution of higher education (IHE) and an alternative certification program at an IHE. The definition of *post-baccalaureate program* has been amended to clarify that a post-baccalaureate program is designed for individuals who are seeking certification and an additional degree while an alternative certification program at an IHE is designed for individuals who are only seeking certification.

The definition of *internship* has been removed from 19 TAC §227.5 because this term is not used in 19 TAC Chapter 227. The remaining definitions have been renumbered as necessary.

Admission Criteria

A minor technical edit to the language in 19 TAC §227.10(a)(3) has been made to clarify that the minimum GPA requirement is for admission into an EPP.

After the language in 19 TAC §227.10(a)(3)(A) was amended in the December 2015 adoption, EPPs asked for clarification on which documentation should be used to determine the admission GPA. Language has been amended to clarify that an official transcript is to be used to determine the admission GPA.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(I) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled. Language has been amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had less than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.10(a)(3)(A)(ii)(II) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which the grades were earned. Language has been amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's most recent degree. This amendment allows an applicant who had started an additional degree but was not able to finish the degree before seeking admission to an EPP to use the additional coursework on the most recent transcript to meet the minimum GPA requirement. By allowing applicants to use grades from coursework completed after a bachelor's degree, the rules will comport with the statutory language that requires a GPA of at least 2.5 for the last 60 semester credit hours attempted at a public or private IHE.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement. Language has been amended to clarify that an applicant to a teacher preparation program must pass the appropriate content certification examination to meet the subject matter requirement of the TEC, §21.0441. Also, language has been amended so that TEA staff can administratively approve requests for an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination. This amendment provides an efficient way for TEA staff to administratively approve registration requests for content certification examinations.

After the language in 19 TAC §227.10(a)(3)(B)(ii) was added in the December 2015 adoption, EPPs and applicants to programs also asked for clarification on the eligibility criteria for the 10% exception to the minimum GPA requirement as it applied to applicants for programs that lead to certification in a class other than classroom teacher. Because the SBEC does not currently have appropriate subject matter examinations for the student services, principal, and superintendent certificate classes, language has been added as 19 TAC §227.10(a)(3)(D) to identify the GRE® (Graduate Record Examinations) revised General Test as the appropriate subject matter examination for an applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher.

Since published as proposed, language in 19 TAC §227.10(a)(3)(D) has been amended to clarify that the Educational Testing Service (ETS) will determine scores equivalent to a GPA of 2.5 on the Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® revised General Test. The language that was published as proposed identified the SBEC as the entity that would determine the equivalent scores. By amending the language in this way, ETS will provide equivalent scores to TEA staff, TEA staff will share the equivalent scores with the SBEC through an information item at an SBEC meeting, and any changes to the equivalent scores will also be shared with the SBEC through information items at subsequent SBEC meetings. Because ETS administers the GRE® revised General Test and has a procedure for determining equivalent GPA scores, this process will allow equivalent scores to be published on the TEA website in a timelier manner than requiring the SBEC to determine and approve equivalent scores.

After the language in 19 TAC §227.10(a)(4)(D) was amended in the December 2015 adoption, EPPs and applicants asked for clarification on the procedures that TEA staff would use to allow an applicant who had previously enrolled in an EPP and wanted to register for a content certification examination for the purpose of admission into an EPP. Language has been amended so that TEA staff can administratively approve requests by an applicant who has previously been enrolled in an EPP to register for a content certification examination unless the applicant is seeking to be readmitted to the EPP that had previously granted approval to attempt the content certification examination. This amendment provides an efficient way for TEA staff to administratively approve registration requests for content certification examinations.

After the language in 19 TAC §227.10(a)(5) was amended in the December 2015 adoption, EPPs asked for clarification on the requirements for an applicant to demonstrate basic skills in reading, written communication, and mathematics. Language has been amended to clarify that an applicant needs to meet the Texas Success Initiative (TSI) requirement (which is currently a passing score on the TSI Assessment offered by the College Board) or one of the exemptions, exceptions, or waivers listed in the Texas Higher Education Coordinating Board (THECB) rule 19 TAC §4.54 (which includes an associate's or higher degree from an accredited IHE). The TSI requirement is used by IHEs to

assess a student's reading, written communication, and mathematics readiness to enroll in an entry-level freshman course.

After the language in 19 TAC §227.10(a)(6) was amended in the December 2015 adoption, EPPs asked for clarification on the English language proficiency requirement for applicants seeking career and technical education (CTE) certifications that do not require a bachelor's degree. Language has been amended to clarify that the equivalent of a high school diploma that was earned through an accredited high school in the United States can be used to meet the English language proficiency admission requirement for CTE certifications that do not require a degree from an IHE. Texas high school graduation requirements include proficiencies in the English language. EPPs and applicants also asked for clarification on the English language proficiency requirement for applicants to undergraduate university programs. Language has been added to clarify that the English language proficiency required for admission to the IHE can be used to meet the English language proficiency admission requirement of an EPP because admission requirements of accredited IHEs include proficiencies in the English language.

Language in 19 TAC §227.10(b) has been amended to clarify that EPPs may adopt additional requirements that are not in conflict with those required in 19 TAC §227.10. Also, technical edits have been made in 19 TAC §227.10 for clarity.

Since published as proposed, language has been added in 19 TAC §227.10(e) to allow an EPP at an entity that is accredited by an accrediting organization recognized by the THECB to use its own foreign credential evaluation service to meet the requirement described in 19 TAC §245.10(a)(2) if the entity is in good standing with its accrediting organization. By adding this language, applicants to EPPs at accredited entities that have their own foreign credential evaluation service will not be required to have their transcript reviewed by a foreign credential evaluation service recognized by TEA staff because the review by the accredited entity will be sufficiently reliable and accurate.

Contingency Admission

Language in 19 TAC §227.15(b) has been amended to clarify that an applicant's acceptance of an offer for contingent admission to an EPP needs to be in writing.

Since published as proposed, language has been amended in 19 TAC §227.15(b) to clarify that the effective date of an applicant's contingent admission to an EPP be the date that was included in the offer of contingency admission from the EPP. By amending the language in this way, the effective date of contingent admission to an EPP will be clearer and the EPP will have a clearer deadline of when to notify the TEA of an applicant's contingent admission.

During the public comment period of the December 2015 adoption of revisions to 19 TAC Chapter 227, the SBEC received a suggestion to require an EPP to notify the TEA of contingent admissions within five business days. TEA staff agreed with the suggestion, but it was not included in the December 2015 adoption. The clarification has been included as part of this adoption as 19 TAC §227.15(c), which requires an EPP to notify the TEA of contingent admissions within seven calendar days instead of five business days to provide a clearer deadline of when an EPP must notify the TEA of an applicant's admission to a program. The remaining subsections have been relettered accordingly.

After the language in 19 TAC §227.15(e) was amended in the December 2015 adoption, EPPs asked for clarification on whether post-baccalaureate programs and alternative certification programs at an IHE may admit candidates who had earned an undergraduate degree from the same IHE. Language has been amended to clarify that a post-baccalaureate program or an alternative certification program at an IHE may admit candidates who had been provided coursework or training by the IHE prior to contingent admission if the coursework or training was provided as part of the undergraduate degree.

Formal Admission

Similar changes in 19 TAC §227.17 have been made that were described for 19 TAC §227.15.

Since published as proposed, language has been amended in 19 TAC §227.17(d) to clarify that the effective date of an applicant's formal admission to an EPP be the date that was included in the offer of formal admission from the EPP. By amending the language in this way, the effective date of formal admission to an EPP will be clearer and the EPP will have a clearer deadline of when to notify TEA of an applicant's formal admission.

Incoming Class Grade Point Average

After the language in 19 TAC §227.19(a)(2)(A) was added in the December 2015 adoption, EPPs asked for clarification on how an EPP should determine the admission GPA for the last 60 hours of coursework for applicants who had fewer than 60 semester credit hours at the IHE in which they are currently enrolled. Language has been amended to clarify that an EPP may use transcripts from previously attended IHEs to determine the admission GPA for the last 60 hours of coursework for applicants who had fewer than 60 semester credit hours at the IHE in which they are currently enrolled.

After the language in 19 TAC §227.19(a)(2)(B) was added in the December 2015 adoption, EPPs asked for clarification on whether an EPP could use grades for coursework from an IHE that were earned after an applicant had been conferred a degree but the applicant was not currently enrolled in the IHE from which the grades were earned. Language has been amended to clarify that an EPP may use grades from an applicant's most recent transcript to determine the admission GPA for the last 60 hours of coursework if an applicant earned grades for coursework after the applicant's conferred degree. This amendment will allow an applicant who had started an additional degree but was not able to finish the degree before seeking admission to an EPP to use the additional coursework on the most recent transcript to meet the minimum GPA requirement. By allowing applicants to use grades from coursework completed after a bachelor's degree, the rules will comport with the statutory language that requires a GPA of at least 2.5 for the last 60 semester credit hours attempted at a public or private IHE.

Implementation Date

Language in 19 TAC §227.20 has been amended so that the subchapter applies to an applicant who is admitted to an EPP on or after January 1, 2017. In the previous two adoptions, the difference between the effective date of the rule and the implementation date of the rule ranged from three to seventeen days. The adopted implementation date provides EPPs with more time (approximately ten weeks) between the effective date of the rules and the implementation date to adjust their policies and procedures to comport with the rules.

SUMMARY OF COMMENTS AND BOARD RESPONSES. The public comment period on the proposal began July 1, 2016, and ended August 1, 2016. The SBEC also provided an opportunity

for registered oral and written comments at the August 5, 2016, meeting in accordance with the SBEC board operating policies and procedures. Following is a summary of the public comments received and corresponding board responses regarding the proposed amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20.

Comment: Representatives of The University of Texas at Austin (UT-Austin) and The University of Texas at Dallas (UT-Dallas) commented that the proposed amendment to 19 TAC §227.5 clarifying the definition of *post-baccalaureate program* would alter how some EPPs view their programs and would require some EPPs to make major changes in how their programs are administered. A representative of UT-Austin recommended that the definition be reconsidered after further review and in consultation with EPP stakeholders. Another representative of UT-Austin recommended amending the definition so that it remains the same. A representative of UT-Dallas suggested either amending the definition of *post-baccalaureate program* so that it remains the same or is very similar to the current definition.

Board Response: The SBEC disagreed with maintaining the definition of *post-baccalaureate program* as currently in rule. The TEC, §21.0443, authorizes the SBEC to propose rules to establish standards to govern the approval or renewal of EPPs. Section 228.20(a) allows preparation for the certification of educators to be delivered by an IHE, a regional education service center, a public school district, or other entity. The TEC, §21.049, also authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs. Section 227.5(2) defines an alternative certification program as an approved EPP, delivered by entities described in 19 TAC §228.20(a), that is specifically designed as an alternative to a traditional undergraduate certification program and for individuals already holding at least a bachelor's degree from an accredited IHE.

Of the 81 IHEs that currently offer certification to individuals that already hold at least a bachelor's degree, 24 (30%) offer a program that is classified as an alternative certification program, 76 (94%) offer a program that is classified as a post-baccalaureate program, and 20 (25%) offer an alternative certification and a post-baccalaureate program. By amending the definition, applicants, candidates, EPPs, and the SBEC would be able to distinguish between alternative certification and post-baccalaureate programs at IHEs. IHEs that are currently offering one or both types of certification programs would notify TEA staff if there needs to be any changes to how the SBEC classifies their program(s). There would be no cost to EPPs for this change in classification. Any modifications an EPP would need to make as a result of a classification change should be minor.

Comment: Representatives of UT-Austin commented that 19 TAC §227.10(a)(3) should be amended to allow grades from coursework from any accredited IHE to be used for the calculation of the overall and the last 60 semester credit hour GPA that is used for admission to an EPP.

Board Response: The SBEC agreed with an EPP using coursework grades from any accredited IHE to be used for the calculation of the last 60 semester credit hour GPA that is used for admission to an EPP. The amendment to 19 TAC §227.10(a)(3) allows an EPP to use grades from all coursework previously attempted at an IHE if an applicant has less than 60 semester credit hours on the official transcript from the IHE in which the applicant is currently enrolled. The amendment also allows an EPP to use grades from all coursework completed beyond the applicant's most recent degree to determine the last 60 semester credit hour GPA.

The SBEC disagreed with an EPP using coursework grades from any accredited IHE to be used for the calculation of the overall GPA that is used for admission to an EPP. The current rule and amendment to 19 TAC §227.10(a)(3) allow an EPP to use the overall GPA from the IHE where the applicant is currently enrolled or from the IHE where the most recent degree was conferred. By using this method, the EPP would not have to perform any additional calculations because the overall GPA would be calculated based on the IHE's method of determining which coursework, including transfer coursework from other IHEs, is used to determine the overall GPA.

Comment: Representatives of UT-Austin commented that 19 TAC §227.10(e) should be amended to allow an EPP at an accredited IHE to use its own foreign credential evaluation service if the IHE is in good standing with the accrediting agency.

Board Response: The SBEC agreed and amended 19 TAC §227.10(e) to allow any EPP that has its own foreign credential evaluation service and is accredited by an accrediting organization recognized by the THECB to review foreign credentials required for admission. If the EPP is in good standing with its accrediting organization, the review by the EPP would be sufficiently reliable and accurate. In addition, applicants to the EPP would not be required to have their transcripts reviewed by a separate foreign credential evaluation service.

Comment: A representative of iteachTexas commented that 19 TAC §227.10(c) should be amended to require an EPP to admit applicants transferring from another EPP to be in good standing with the previous EPP. Evidence of good standing would be indicated by the completion of an EPP candidate transfer form.

Board Response: The SBEC agreed with requiring an individual to notify an EPP about the individual's previous enrollment in another EPP. TEA staff currently provides a candidate transfer form that EPPs may use when an applicant is transferring from another EPP. This candidate transfer form has been added to the list of evidence as part of the proposed amendment to 19 TAC §228.10(b)(1), which would include a figure that describes the documentation that an EPP would be required to retain for each candidate who transferred from another EPP.

The SBEC disagreed with requiring an EPP to admit transfer applicants who are in good standing from their previous EPP. While the current version of the candidate transfer form does allow an EPP to identify if a candidate is in good standing, the reasons for a candidate not being in good standing with an EPP may vary between EPPs. As such, an EPP that is considering an applicant who left a previous EPP may determine whether the reason for not being in good standing should be cause for denying admission to the applicant.

Comment: A representative of UT-Austin commented that 19 TAC §227.10(a)(1) does not require that an applicant for a post-baccalaureate program be enrolled in an accredited IHE.

Board Response: The SBEC provides the following clarification. Section 227.10(a)(2) requires an applicant for a post-baccalaureate program to have a bachelor's degree earned from and conferred by an accredited IHE. The applicant may be enrolled at an accredited IHE that offers a post-baccalaureate program, but current enrollment in an accredited IHE is not required to be considered for admission.

Comment: A representative of UT-Austin commented that 19 TAC §227.15(a)(1) needs clarification as to when an applicant becomes a candidate for purposes of EPP accountability.

Board Response: The SBEC disagreed. An applicant becomes a candidate when the individual meets all of the admission requirements and begins the EPP coursework and training. A candidate is able to begin taking coursework with an EPP during the semester in which the candidate expects to have his or her bachelor's degree conferred. Under proposed 19 TAC §229.4(a)(1)(B), if a candidate has been contingently enrolled in an EPP and the EPP approves the candidate to attempt a certification examination, the results of the certification examination will be used in the calculation of the pass rate for the certification examination performance standard if the certification examination is required to obtain initial certification in the class or category for which the individual serves his or her internship, clinical teaching, or practicum.

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §§227.1, 227.5, 227.10, 227.15, 227.17, 227.19, and 227.20 at the September 16, 2016, SBOE meeting.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §21.031, which authorizes the State Board for Educator Certification (SBEC) to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.044(a), which requires the SBEC to propose rules establishing the training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program and to specify the minimum academic qualifications required for a certificate; §21.044(g)(3), which requires EPPs to provide certain information on EPP performance; §21.0441, which requires the SBEC to adopt rules setting certain admission requirements for EPPs; §21.049(a), which authorizes the SBEC to propose rules providing for educator certification programs as an alternative to traditional EPPs; and §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A.

CROSS REFERENCE TO STATUTE. The adopted amendments implement the TEC, §§21.031, 21.044(a) and (g)(3), 21.0441, 21.049(a), and 21.050(a).

§227.10. Admission Criteria.

(a) The educator preparation program (EPP) delivering educator preparation shall require the following minimum criteria of all applicants seeking initial certification in any class of certificate, unless specified otherwise, prior to admission to the program.

(1) For an undergraduate university program, an applicant shall be enrolled in an accredited institution of higher education (IHE).

(2) For an alternative certification program or post-baccalaureate program, an applicant shall have, at a minimum, a bachelor's degree earned from and conferred by an accredited IHE.

(3) For an undergraduate university program, alternative certification program, or post-baccalaureate program, to be eligible for admission into an EPP, an applicant shall have a grade point average (GPA) of at least 2.5 before admission.

(A) The GPA shall be calculated from an official transcript as follows:

(i) 2.5 on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission); or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred (alternative certification program formal admission or post-baccalaureate program formal admission); or

(ii) 2.5 in the last 60 semester credit hours on all coursework previously attempted by the person at an accredited IHE:

(I) at which the applicant is currently enrolled (undergraduate university program formal admission, alternative certification program contingency admission, or post-baccalaureate program contingency admission). If an applicant has less than 60 semester credit hours on the official transcript from the accredited IHE at which the applicant is currently enrolled, the EPP shall use grades from all coursework previously attempted by a person at the most recent accredited institution(s) of higher education, starting with the most recent coursework from the official transcript(s), to calculate a GPA for the last 60 semester credit hours; or

(II) from which the most recent bachelor's degree or higher from an accredited IHE was conferred. If an applicant has hours beyond the most recent degree, an EPP may use grades from the most recent 60 hours of coursework from an accredited IHE (alternative certification program formal admission or post-baccalaureate program formal admission).

(B) An exception to the minimum GPA requirement may be granted by the program director only in extraordinary circumstances and may not be used by a program to admit more than 10% of any incoming class of candidates. An applicant is eligible for this exception if:

(i) documentation and certification from the program director that an applicant's work, business, or career experience demonstrates achievement equivalent to the academic achievement represented by the GPA requirement; and

(ii) in accordance with the Texas Education Code, §21.0441(b), an applicant must pass an appropriate content certification examination as specified in paragraph (4)(C) and (D) of this subsection for each subject in which the applicant seeks certification prior to admission. Applicants who do not meet the minimum GPA requirement and have previously been admitted into an EPP may request permission to register for an appropriate content certification examination if the applicant is not seeking admission to the same EPP that previously granted test approval.

(C) An applicant who is seeking a career and technical education (CTE) certificate that does not require a degree from an accredited IHE is exempt from the minimum GPA requirement.

(D) An applicant who does not meet the minimum GPA requirement and is seeking certification in a class other than classroom teacher must perform at or above a score equivalent to a 2.5 GPA on the

Verbal Reasoning, Quantitative Reasoning, and Analytic Writing sections of the GRE® (Graduate Record Examinations) revised General Test. The State Board for Educator Certification will use equivalency scores established by the Educational Testing Service, and the Texas Education Agency (TEA) will publish those equivalency scores annually on the TEA website.

(4) For an applicant who will be seeking an initial certificate in the classroom teacher class of certificate, the applicant shall have successfully completed, prior to admission, at least:

(A) a minimum of 12 semester credit hours in the subject-specific content area for the certification sought, unless certification sought is for mathematics or science at or above Grade 7; or

(B) 15 semester credit hours in the subject-specific content area for the certification sought if the certification sought is for mathematics or science at or above Grade 7; or

(C) a passing score on a comparable content certification examination administered by a vendor on the TEA-approved vendor list published by the commissioner of education on the TEA website for the calendar year during which the applicant seeks admission; or

(D) for an applicant who has not previously been admitted into an EPP, a passing score on a content certification examination administered by a TEA-approved vendor. An applicant who has previously been admitted into an EPP may request permission to register for a content certification examination if an applicant is not seeking admission to the same EPP that previously granted test approval.

(5) An applicant must demonstrate basic skills in reading, written communication, and mathematics by meeting the requirements of the Texas Success Initiative under the rules established by the Texas Higher Education Coordinating Board (THECB) in Part 1, Chapter 4, Subchapter C, of this title (relating to Texas Success Initiative), including one of the requirements established by §4.54 of this title (relating to Exemptions, Exceptions, and Waivers).

(6) An applicant must demonstrate the English language proficiency skills as specified in §230.11 of this title (relating to General Requirements).

(A) An applicant for CTE certification that does not require a bachelor's degree from an accredited IHE may satisfy the English language proficiency requirement with an associate's degree or high school diploma or the equivalent that was earned at an accredited IHE or an accredited high school in the United States.

(B) An applicant to a university undergraduate program that leads to a bachelor's degree may satisfy the English language proficiency requirement by meeting the English language proficiency requirement of the accredited IHE at which the applicant is enrolled.

(7) An applicant must submit an application and participate in either an interview or other screening instrument to determine if the EPP applicant's knowledge, experience, skills, and aptitude are appropriate for the certification sought.

(8) An applicant must fulfill any other academic criteria for admission that are published and applied consistently to all EPP applicants.

(b) An EPP may adopt requirements in addition to and not in conflict with those required in this section.

(c) An EPP may not admit an applicant who:

(1) has been reported as completing all EPP requirements by another EPP in the same certification category or class, unless the applicant only needs certification examination approval; or

(2) has been employed for three years in a public school under a permit or probationary certificate as specified in Chapter 230, Subchapter D, of this title (relating to Types and Classes of Certificates Issued), unless the applicant is seeking clinical teaching that may lead to the issuance of an initial standard certificate.

(d) An EPP may admit an applicant for CTE certification who has met the experience and preparation requirements specified in Chapter 230 of this title (relating to Professional Educator Preparation and Certification) and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates).

(e) An EPP may admit an applicant who has met the minimum academic criteria through credentials from outside the United States that are determined to be equivalent to those required by this section using the procedures and standards specified in Chapter 245 of this title (relating to Certification of Educators from Other Countries). An EPP at an entity that is accredited by an accrediting organization recognized by the THECB may use its own foreign credential evaluation service to meet the requirement described in §245.10(a)(2) of this title (relating to Application Procedures), if the entity is in good standing with its accrediting organization.

§227.15. Contingency Admission.

(a) An applicant may be accepted into an alternative certification program or post-baccalaureate program on a contingency basis pending receipt of an official transcript showing degree conferred, as specified in §227.10(a)(2) of this title (relating to Admission Criteria), provided that:

(1) the applicant is currently enrolled in and expects to complete the courses and other requirements for obtaining, at a minimum, a bachelor's degree at the end of the semester in which admission to the program is sought;

(2) all other admission requirements specified in §227.10 of this title have been met;

(3) the EPP must notify the applicant of the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification; and

(4) the applicant must accept the offer of contingency admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(b) The effective date of contingency admission shall be included in the offer of contingency admission.

(c) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's contingency admission.

(d) An applicant admitted on a contingency basis may begin program training and may be approved to take a certification examination, but shall not be recommended for a probationary certificate until the bachelor's degree or higher from an accredited institution of higher education (IHE) has been conferred.

(e) Except as provided by this section, an alternative certification program or post-baccalaureate program, prior to admission on a contingency basis, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an IHE may admit an applicant if coursework and training was provided by the same IHE as part of the degree to be conferred.

(f) The contingency admission will be valid for only the fall, spring, or summer semester for which the contingency admission was granted and may not be extended for another semester. The end of each semester shall be consistent with the common calendar established by the Texas Higher Education Coordinating Board.

§227.17. Formal Admission.

(a) For an applicant to be formally admitted to an educator preparation program (EPP), the applicant must meet all the admission requirements specified in §227.10 of this title (relating to Admission Criteria).

(b) For an applicant to be formally admitted to an EPP, the EPP must notify the applicant of the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(c) For an applicant to be considered formally admitted to the EPP, the applicant must accept the offer of formal admission in writing by mail, personal delivery, facsimile, email, or an electronic notification.

(d) The effective date of formal admission shall be included in the offer of formal admission.

(e) An EPP must notify the Texas Education Agency within seven calendar days of a candidate's formal admission.

(f) Except as provided by §227.15 of this title (relating to Contingency Admission), an alternative certification program or post-baccalaureate program, prior to formal admission, shall not provide coursework, training, and/or examination approval to an applicant that leads to initial certification in any class of certificate. A post-baccalaureate or alternative certification program at an institution of higher education (IHE) may admit an applicant if coursework and training was provided by the same IHE as part of a previous degree that was conferred.

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 September 28, 2016.

TRD-201605056
Christina De La Fuente-Valadez
Director, Rulemaking
State Board for Educator Certification
Effective date: October 18, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 475-1497

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §41.36

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.36 without changes to the proposed rule text as published in the August 19, 2016, issue of the *Texas Register* (41 TexReg 6185).

The adopted amendments to §41.36(a) simplify the wording of the initial enrollment opportunity afforded therein to a full-time or part-time employee and clarify that this enrollment opportunity also applies to the eligible dependents of the employee. However, due to the existing definitions of a full-time and part-time employee found in §41.33, these changes do not make any substantive changes to this enrollment opportunity.

The adopted, new §41.36(b) creates an additional enrollment opportunity for a part-time employee eligible for TRS-ActiveCare who later becomes a full-time employee eligible for TRS-ActiveCare during the current plan year. This enrollment opportunity also applies to the employee's eligible dependents. This enrollment opportunity exists even if this employee previously declined enrollment in TRS-ActiveCare during the current plan year. An eligible part-time employee who later becomes a full-time employee eligible for TRS-ActiveCare during the current plan year may also become eligible for employer mandated coverage under the Patient Protection and Affordable Care Act (aka the "PPACA"). This additional enrollment opportunity will allow participating entities to offer TRS-ActiveCare coverage to such individuals, which will allow the participating entities to avoid a penalty that they may otherwise incur under the PPACA.

The adopted amendments to current §41.36(b) clarify that the initial enrollment period for an eligible full-time or part-time employee whose employer becomes a participating entity is equally applicable to the employee's eligible dependents.

Current §41.36(d) addresses special enrollment events associated with TRS-ActiveCare that arise under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) on or after September 1, 2011. Current §41.36(e) addresses special enrollment events associated with TRS-ActiveCare that arose on or before August 31, 2011, as defined by TRS-ActiveCare itself. With the passage of time, for the sake of clarity, the introductory language in current §41.36(d) and the entire current §41.36(e) are no longer necessary and can be deleted.

No comments were received on the rule proposals.

Statutory Authority: The amendments to §41.36 are adopted under the authority of §1579.052 of the Insurance Code, which authorizes TRS as trustee of the TRS-ActiveCare program to adopt rules it considers necessary to implement and administer the program.

Cross-Reference to Statute: The adopted amendments affect Chapter 1579 of the Insurance Code, which provides for the establishment and administration of TRS-ActiveCare.

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 September 30, 2016.

TRD-201605073

Brian K. Guthrie
Executive Director
Teacher Retirement System of Texas
Effective date: October 20, 2016
Proposal publication date: August 19, 2016
For further information, please call: (512) 542-6513

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PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 101. PRACTICE AND PROCEDURE REGARDING CLAIMS

34 TAC §101.6

The Board of Trustees of the Texas County and District Retirement System ("TCDRS") adopts an amendment to §101.6, concerning the timing of the first annuity payment, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4982). The text of the rule will not be republished.

The amendment to §101.6 clarifies that the first annuity payment is payable beginning on the last day of the first month following the effective date of retirement.

The Board received no comments, written or otherwise, regarding the adoption of the amendment.

The amendment is adopted under the Government Code, §845.102, which authorizes the TCDRS board of trustees to adopt rules for the efficient administration of the system.

No other statutes, articles, or codes 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 October 3, 2016.

TRD-201605089
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: October 23, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 637-3247

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CHAPTER 105. CREDITABLE SERVICE

34 TAC §105.5

The Board of Trustees for the Texas County and District Retirement System ("TCDRS") adopts an amendment to §105.5, concerning error correction, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4983). The text of the rule will not be republished.

The adopted amendment provides for an online process in which participating employers will submit error corrections online.

The Board received no comments, written or otherwise, regarding the adoption of the amendment. The amendment is effective January 31, 2017.

The amendment is adopted under the Government Code, §845.102, which authorizes the TCDRS board of trustees to adopt rules for the efficient administration of the system.

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

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 October 3, 2016.

TRD-201605090
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 31, 2017
Proposal publication date: July 8, 2016
For further information, please call: (512) 637-3247

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34 TAC §105.7

The Board of Trustees of the Texas County and District Retirement System ("TCDRS") adopts new rule, §105.7 concerning the authorization of credited service, without changes to the adopted text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4985). The text of the new rule will not be republished.

The adopted new rule allows the governing body of a participating subdivision to authorize credited service (time only) for service performed by employees of a governmental entity that was subsequently merged, converted, or otherwise transferred into the participating subdivision or transferred the employment of the employees to the participating subdivision.

The Board received no comments, written or otherwise, regarding the adopted new rule.

The new rule is adopted under the Government Code, §843.201, which authorizes the TCDRS Board of Trustees to adopt rules concerning service credit for certain public employment.

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

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

Filed with the Office of the Secretary of State on October 3, 2016.

TRD-201605091
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: October 23, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 637-3247

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34 TAC §105.8

The Board of Trustees for the Texas County and District Retirement System ("TCDRS") adopts new §105.8, concerning employee termination date, without changes to the proposed text as published in the July 8, 2016, issue of the *Texas Register*

(41TexReg 4986). The text of the new rule will not be republished.

The new rule will improve the accuracy and integrity of member data by requiring participating employers to submit the date of a member's termination of employment to TCDRS no later than 15 days after the member's termination of employment or as soon as practicable.

The Board received no comments, written or otherwise, regarding the adopted new rule. The rule is effective January 31, 2017.

The new rule is adopted under the Government Code, §845.102, which authorizes the TCDRS board of trustees to adopt rules for the efficient administration of the system.

No other statutes, articles, or codes are affected by this adopted new rule.

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

Filed with the Office of the Secretary of State on October 3, 2016.

TRD-201605092
Ann McGeehan
General Counsel
Texas County and District Retirement System
Effective date: January 31, 2017
Proposal publication date: July 8, 2016
For further information, please call: (512) 637-3247

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

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) will review and consider whether to readopt, readopt with amendments, or repeal the rules in Title 1, Part 12, Texas Administrative Code, Chapter 252, Administration. This review is conducted in accordance with Government Code §2001.039.

CSEC has conducted a preliminary review of Chapter 252 and has determined that the reasons for initially adopting the chapter continue to exist. Staff does not anticipate proposing amendments to Chapter 252.

Comments or questions regarding this review should be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to *csecinfo@csec.texas.gov.*

Any proposed changes (repeal, readoption, or readoption with amendments) to the Chapter 252 rules will be published for comment in the "Proposed Rules" section of a subsequent issue of the *Texas Register.* In accordance with the requirements of the Administrative Procedures Act, Texas Government Code Chapter 2001. Any proposed changes will be open for public comment prior to being considered for adoption by CSEC.

Chapter 252 -- Administration

§252.1 Definition of State Agency for Billing Purpose of the 9-1-1 Service Fees and Surcharges

§252.2 Purchase of Goods and Services

§252.3 Sick Leave Pool

§252.4 Charges for Open Records Requests

§252.5 Employee Training

§252.6 Wireless Service Fee Proportional Distribution

§252.7 Definitions

§252.8 Emergency Communications Advisory Committee

§252.9 Liability Protection of NG9-1-1 Service Providers

TRD-201605055

Patrick Tyler
General Council
Commission on State Emergency Communications
Filed: September 28, 2016

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Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) proposes to review Chapter 53 of TRS' rules, found in Title 34, Part 3, of the Texas Administrative Code. Chapter 53 concerns certification by companies who offer voluntary 403(b) investment options through salary reduction agreements between public school employees and their local employers.

TRS will review Chapter 53 in accordance with the requirements of §2001.039 of the Texas Government Code, which concerns the review of existing rules. TRS asserts that the reasons for adopting Chapter 53 continue to exist. TRS will review the chapter to update and improve the rules as needed. TRS will also file a rule review plan for Chapter 53 with the *Texas Register.*

Written comments pertaining to this proposed rule review must be submitted to Brian Guthrie, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication of this proposed rule review notice in the *Texas Register.* In addition, the public will be given an opportunity to comment on the proposed rule review at a meeting of the TRS Board of Trustees (board) or the Policy Committee of the board or both.

Any changes to these rules proposed because of the rule review will be published in the Proposed Rule section of the *Texas Register.* The proposed rule changes will be open for public comment before final adoption or repeal by TRS in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

The following chapter is available for review at http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=34&pt=3&ch=53&rl=Y:

Chapter 53. Certification by Companies Offering Qualified Investment Products.

TRD-201605123

Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: October 5, 2016

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Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) published notice of its annual review of the definitions in §255.4 of "local exchange access line" and "equivalent local exchange access line," in the July 15, 2016, issue of the*Texas Register* (41 TexReg 5249). CSEC is required by statute (Health and Safety Code §771.063) to adopt by rule the foregoing definitions and to annually review these definitions to address technical and structural changes in the provision of telecommunications and data services.

No comments were received regarding CSEC's notice of annual review.

CSEC has determined not to propose amendments to the definitions in §255.4, and to leave in effect the rule as adopted in October 2007.

This concludes CSEC's annual review of §255.4.

TRD-201605054
Patrick Tyler
General Council
Commission on State Emergency Communications
Filed: September 28, 2016

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & 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 & Safety Code.

Case Title and Court: *Ector County, Texas and the State of Texas v. AmeriFlush, Inc., and Lonnie Lee Lawrence,* Cause No. D-1-GN-15-004903, in the 200th Judicial District Court, Travis County, Texas.

Nature of the Defendants' Operations: Defendant AmeriFlush, Inc. is a portable sanitary unit rental business. On October 11, 2012, the Ector County Environmental Enforcement office received complaints that a truck operated by AmeriFlush, Inc. was observed discharging sewage into a field adjacent to its business location. Ector County Environmental Enforcement officers visited the field, near 4606 Johnson Road, Odessa, and observed several areas with sewage present and also noted that runoff from the area of discharge leads to a drinking water pipeline. The defendants participated in remediating the field and provided Ector County with proof of remediation.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendants to pay civil penalties of $7,000 to be divided equally between Ector County and the State of Texas. The Defendants will pay attorney's fees to Ector County in the amount of $4,500 and to the State of Texas in the amount of $1,225.

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 Sireesha Chirala, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, 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-201605077
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: September 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 10/10/16 - 10/16/16 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 10/10/16 - 10/16/16 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 10/01/16 - 10/31/16 is 18% or Consumer/Agricultural/Commercial credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 10/01/16 - 10/31/16 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-201605099
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 4, 2016

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Texas Education Agency

Request for Applications Concerning the 2017-2019 Public Charter School Program Start-Up Grant

Filing Date. October 5, 2016

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-16-101 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title V, Part B, Subpart 1, Charter School Programs.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-101 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program start-up funds, and are one of the following: (1) a campus charter school authorized by the local board of trustees in Dallas Independent School District (ISD), Longview ISD, Palestine ISD, or San Antonio ISD pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before December 14, 2016, that submits all required documentation as stated in the RFA; (2) a campus charter school authorized by the local board of trustees in Dallas ISD or San Antonio ISD after December 16, 2015, that began operating during the 2016-2017 school year, is designated as a campus charter in AskTED, and submits all required documentation as stated in the RFA; (3) an open-enrollment charter school authorized by the commissioner of education

under the Generation 21 charter application pursuant to the TEC, Chapter 12, Subchapter D; (4) an open-enrollment charter school authorized by the commissioner under the Generation 20 charter application pursuant to the TEC, Chapter 12, Subchapter D, that has never received Public Charter School Program start-up funds; (5) a college, university, or junior college charter school authorized by the commissioner pursuant to the TEC, Chapter 12, Subchapter E; (6) an open-enrollment charter school designated by the commissioner for the 2017-2018 or 2018-2019 school year as a new school under an existing charter; or (7) an open-enrollment charter school designated by the commissioner, for the 2016-2017 school year, as a new school under an existing charter that has never received Public Charter School Program start-up funds. Charters awarded by the commissioner under the Generation 21 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charters submitting an application for a New School Designation for the 2017-2018 or 2018-2019 school year are considered to be eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2017-2019 Public Charter School Program Start-Up Grant are to provide financial assistance for the start-up and implementation of charter schools and expand the number of high-quality charter schools available to students across the state.

Dates of Project. The 2017-2019 Public Charter School Program Start-Up Grant will be implemented primarily during the 2017-2018 and 2018-2019 school years. Applicants should plan for a starting date of no earlier than May 1, 2017, and an ending date of no later than July 31, 2019, contingent on the continued availability of federal funding.

Project Amount. Approximately $9.6 million is available for funding the 2017-2019 Public Charter School Program Start-Up Grant. It is anticipated that approximately 10 to 15 grants of no more than $800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Wednesday, November 9, 2016, from 10:00 a.m. to 12:00 p.m. Register for the webinar at https://attendee.gotowebinar.com/register/542948015154425602. Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.texas.gov or faxed to (512) 463-9732 prior to Wednesday, October 26, 2016. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://tea4avoswald.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.texas.gov no later than Monday, November 14, 2016. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Monday, November 28, 2016. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, December 15, 2016, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas, 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201605117
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 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 November 14, 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 November 14, 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: AMERICAN GENERAL REALTY INVESTMENT CORPORATION; DOCKET NUMBER: 2016-0592-PST-E; IDENTIFIER: RN105668479; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: underground storage tank (UST) emergency generator; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: $10,492; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(2) COMPANY: ANS Platinum LLC dba Lacy Lakeview Food Mart; DOCKET NUMBER: 2016-0889-PST-E; IDENTIFIER: 102368081; LOCATION: Waco, Mclennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a) and (c)(1), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: BKD VENTURES LLC dba Lucky Food Store 2; DOCKET NUMBER: 2016-1146-PST-E; IDENTIFIER: RN102285178; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: John Fennel, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: BKK Holdings Incorporated dba Adam Food Mart; DOCKET NUMBER: 2014-1308-PST-E; IDENTIFIER: RN101550200; LOCATION: Springtown, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.45(c)(3)(A), by failing to have emergency shutoff valves properly anchored at the base of the dispensers; 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: $10,130; ENFORCEMENT COORDINATOR: John Fennel, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Bona Yean dba K Express 11; DOCKET NUMBER: 2016-1134-PST-E; IDENTIFIER: RN101431872; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,568; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: BRP PROPERTIES LLC; DOCKET NUMBER: 2016-0853-PWS-E; IDENTIFIER: RN105472690; LOCATION: Wallis, Austin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source Escherichia coli (E.coli) sample from the facility's one active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample, and failing to issue public notification and submit a copy of the notification to the executive director (ED) regarding the failure to collect a raw groundwater source E.coli sample; and 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the notification to the ED regarding the failure to conduct routine coliform monitoring, the failure to collect all repeat coliform samples following a positive coliform result, and the failure to conduct increase coliform monitoring; PENALTY: $938; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Casey J. Huddleston; DOCKET NUMBER: 2016-1419-WOC-E; IDENTIFIER: RN105522916; LOCATION: Cross Plains, Callahan County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: CHRISTUS HEALTH; DOCKET NUMBER: 2016-0858-PST-E; IDENTIFIER: RN100619568; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: medical facility with an emergency generator; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: CHRISTUS HEALTH dba Villa de Matel; DOCKET NUMBER: 2016-1004-PST-E; IDENTIFIER: RN102049384; LOCATION: Houston, Harris County; TYPE OF FACILITY: fleet refueling facility with emergency backup generators; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), (d)(1)(B)(iii)(I) and (4)(A)(i), and and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks for each operating day; and 30 TAC §334.48(a), by failing to ensure that the UST system is operated, maintained, and managed in a

manner that will prevent releases of regulated substances; PENALTY: $4,688; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: City of Covington; DOCKET NUMBER: 2016-1030-PWS-E; IDENTIFIER: RN101229698; LOCATION: Covington, Hill County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers of the facility within 24 hours of a low chlorine residual using the prescribed notification format as specified in 30 TAC §290.47(c); 30 TAC §290.46(f)(2), (3)(A)(i)(III) and (ii)(III), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; and 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; PENALTY: $1,121; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Edgewood; DOCKET NUMBER: 2014-1507-MWD-E; IDENTIFIER: RN101916302; LOCATION: Edgewood, Van Zandt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014648001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $9,687; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: City of Nolanville; DOCKET NUMBER: 2016-0318-WQ-E; IDENTIFIER: RN105538722; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System General Permit for small municipal separate storm sewer systems; PENALTY: $22,500; Supplemental Environmental Project offset amount of $18,000; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: E. S. WATER UTILITY CONSOLIDATORS INCORPORATED; DOCKET NUMBER: 2016-0481-PWS-E; IDENTIFIER: RN101253128; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required ten sample sites for the second six-month monitoring period (July 1, 2015 - December 31, 2015) following the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 through December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.117(e)(2), (h), and (i)(3) and §290.122(c)(2)(A) and (f), and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites for two consecutive six-month periods (January 1, 2015 - June 1, 2015, and July 1, 2015 - December 31, 2015) following the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct all of the required water quality parameter sampling during the January 1, 2015 - June 30, 2015, monitoring period; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; 30 TAC §290.117(i)(5) and (k) and §290.122(b)(2)(A) and (f), and 40 CFR §141.85(a) and (b) and §141.90(f)(1), by failing to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2014 - December 31, 2014, and January 1, 2015 through June 30, 2015, monitoring periods and failing to provide the ED with copies of the public education materials and certification that distribution of said materials is being conducted in a manner consistent with TCEQ requirements, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2014 - December 31, 2014, and January 1, 2015 - June 30, 2015, monitoring periods; 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 conduct increased coliform monitoring during the month of May 2014; and 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(A) and (f), and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead action level was exceeded, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; PENALTY: $1,213; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Flournoy Property Management LLC; DOCKET NUMBER: 2016-1273-MLM-E; IDENTIFIER: RN107217242; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: recreational vehicle park; RULES VIOLATED: 30 TAC §213.4(j)(3) and Edwards Aquifer Protection Program ID Number 11-1441101, Standard Conditions Number 6, by failing to obtain approval of a modification to an approved Water Pollution Abatement Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization under Texas Pollutant Elimination System General Permit Number TXR150000 to discharge stormwater associated with construction activities; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: Highway Transport Chemical, LLC; DOCKET NUMBER: 2016-1111-PST-E; IDENTIFIER: RN100864537; LOCA-

TION: La Porte, Harris County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: HILLIARD DOZER, LP; DOCKET NUMBER: 2016-0833-WQ-E; IDENTIFIER: RN105767461; LOCATION: Rogers, Bell County; TYPE OF FACILITY: aggregate production operation (APO); RULE VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(17) COMPANY: IZZY Properties, Incorporated dba KCS Stop N Shop; DOCKET NUMBER: 2016-0992-PST-E; IDENTIFIER: RN101811685; LOCATION: Dickinson, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Joe D. Clifton dba Hills Grocery; DOCKET NUMBER: 2016-1164-PST-E; IDENTIFIER: RN101443737; LOCATION: Hughes Springs, Cass County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the underground storage tanks (USTs); and 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $2,551; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(19) COMPANY: Judson Ventures Incorporated dba Judson Corner Store; DOCKET NUMBER: 2015-0251-PST-E; IDENTIFIER: RN102366754; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: $2,356; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3421; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Load Trail LLC; DOCKET NUMBER: 2016-0426-IWD-E; IDENTIFIER: RN101462570; LOCATION: Sumner, Lamar County; TYPE OF FACILITY: trailer manufacturing facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0005012000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(1) and (11)(A), 319.4, and 319.5(b) and TPDES Permit Number WQ0005012000, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples at the required frequencies; PENALTY: $108,314; Supplemental Environmental Project offset amount of $54,157; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: P B and S C WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0672-PWS-E; IDENTIFIER: RN101450179; LOCATION: Point Blank, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: $52; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Rigsby Ventures, Incorporated dba Neighborhood Food Mart; DOCKET NUMBER: 2016-1076-PST-E; IDENTIFIER: RN101815538; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $24,861; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: River Mart, Incorporated; DOCKET NUMBER: 2016-0555-PST-E; IDENTIFIER: RN103046116; LOCATION: Pharr, Hidalgo County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $9,000; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: S. U. N. WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-0929-PWS-E; IDENTIFIER: RN101456432; LOCATION: Merkel, Taylor County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2), (3)(A)(i)(II) and (iv), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.43(e) and §290.46(m), by failing to provide an intruder-resistant fence or well house around each potable water storage tank and all pressure maintenance facilities that remains locked during periods of darkness and when the facility is unattended, and failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with an appropriate liquid level indicator located at the tank site; 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine (measured as total chlorine) in each finished water storage tank and throughout the distribution system at all times; and 30 TAC §290.42(e)(4)(A), by failing to provide a small bottle of fresh ammonia solution and a full-face, self-contained breathing apparatus or supplied air respirator that meets

Occupational Safety and Health Administration standards outside the chlorination room so they are readily accessible and immediately available to the operator in the event of an emergency; PENALTY: $1,090; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(25) COMPANY: SADAF GLOBAL CORPORATION dba Pakco 3; DOCKET NUMBER: 2016-0708-PST-E; IDENTIFIER: RN102393154; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,800; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Star Roj Incorporated dba Katy Star; DOCKET NUMBER: 2016-0937-PST-E; IDENTIFIER: RN102477668; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $39,481; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(27) COMPANY: Steve Baker; DOCKET NUMBER: 2016-0922-WQ-E; IDENTIFIER: RN106157233; LOCATION: Jasper, Jasper County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(b), by failing to register the site as an APO no later than the 10th business day before the beginning date of regluated activities; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit associated with industrial activities; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: TEXAS CITY STAR, INCORPORATED dba Star Mart; DOCKET NUMBER: 2016-1060-PST-E; IDENTIFIER: RN101434678; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: Texas Tierra III, Limited; DOCKET NUMBER: 2015-1628-PST-E; IDENTIFIER: RN101768976; LOCATION: Monahans, Ward County; TYPE OF FACILITY: facility with an inactive underground storage tank (UST); RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and §334.54(b)(2) and (c)(2), and TWC, §26.3475(c)(1), by failing to maintain the UST system's piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and failing to monitor the UST system for releases; and 30 TAC §334.7(d)(3) and (e)(2) and §334.54(e)(2), by failing to provide an amended registration for any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; PENALTY: $9,625; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(30) COMPANY: Western Refining Wholesale, LLC; DOCKET NUMBER: 2015-0586-PST-E; IDENTIFIER: RN107003444; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposit a regulated substance into a regulated underground storage tank system that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $1,350; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(31) COMPANY: ZSS INVESTMENT INCORPORATED dba Neighbor Mini Mart; DOCKET NUMBER: 2016-0697-PST-E; IDENTIFIER: RN102713138; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; PENALTY: $6,626; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201605097
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 4, 2016

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Enforcement Orders

A default and shutdown order was adopted regarding Batesville One Stop Inc dba Batesville Foodmart, Docket No. 2014-1237-PST-E on October 5, 2016, assessing $3,750 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.

An agreed order was adopted regarding Larry E. Smith, Docket No. 2014-1809-PWS-E on October 5, 2016, assessing $1,752 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.

A default and shutdown order was adopted regarding Myung Cha Cha dba Youngs Mart 3, Docket No. 2015-0713-PST-E on October 5, 2016, assessing $19,387 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 order was adopted regarding Chapman, Inc., Docket No. 2015-0727-PST-E on October 5, 2016 assessing $10,672.50 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.

A default order was adopted regarding R&K Fabricating Inc., Docket No. 2015-0982-MLM-E on October 5, 2016, assessing $5,047 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.

A default order was adopted regarding Donald Rancher and Rebecca Rancher, Docket No. 2015-0996-SLG-E on October 5, 2016, assessing $43,727 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, 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 Speedexx Enterprise Inc. dba Speedexx Food Store, Docket No. 2015-1222-PST-E on October 5, 2016, assessing $24,106 in administrative penalties with $10,189 deferred. 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 Fuel Centers Environmental Management, LLC dba Fuel Center of Legacy, Docket No. 2015-1311-PST-E on October 5, 2016, assessing $10,758 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 Webb County, Docket No. 2015-1428-MLM-E on October 5, 2016, assessing $52,132 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, 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 Donna, Docket No. 2015-1657-MWD-E on October 5, 2016, assessing $12,600 in administrative penalties with $2,520 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United States Army Corps of Engineers, Docket No. 2015-1721-PWS-E on October 5, 2016, assessing $732 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.

A default order was adopted regarding Rasso's Lytle Corporation dba Lytle Exxon Food Mart, Docket No. 2015-1728-PST-E on October 5, 2016, assessing $7,006 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Ideal Business, Inc. dba Quick Mart, Docket No. 2015-1797-PST-E on October 5, 2016, assessing $7,701 in administrative penalties with $1,540 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marina Quest, Inc. dba Texoma Marina and Resort, Docket No. 2015-1826-PWS-E on October 5, 2016, assessing $1,986 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sam Rayburn Water, Inc., Docket No. 2016-0007-PWS-E on October 5, 2016, assessing $1,099 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding United Skates Inc. dba Adventures USA, Docket No. 2016-0026-PWS-E on October 5, 2016, assessing $660 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding North Texas Municipal Water District, Docket No. 2016-0067-MWD-E on October 5, 2016, assessing $7,425 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Claudia Corrales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Chemical LP, Docket No. 2016-0081-AIR-E on October 5, 2016, assessing $13,600 in administrative penalties with $2,720 deferred. Information concerning any aspect of this order may be obtained by contacting Kingsley Coppinger, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sam Rayburn Water, Inc., Docket No. 2016-0087-PWS-E on October 5, 2016, assessing $1,260 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Sarvoday Enterprises LLC dba Times Market, Docket No. 2016-0165-PST-E on October 5, 2016, assessing $85,600 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 Motiva Enterprises LLC, Docket No. 2016-0210-AIR-E on October 5, 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) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Horsemans Ranch Morgan Mill Homeowners Association Incorporated, Docket No. 2016-0223-PWS-E on October 5, 2016, assessing $550 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G-M Water Supply Corporation, Docket No. 2016-0242-PWS-E on October 5, 2016, assessing $1,620 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting David Carney, Enforce-

ment Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Juan Carlos Garza as Trustee of Valley Hi Congregation of Jehovah's Witnesses, Mario A. Cortes as Trustee of Valley Hi Congregation of Jehovah's Witnesses and Francisco C. Sanchez as Trustee of Valley Hi Congregation of Jehovah's Witnesses, Docket No. 2016-0253-PWS-E on October 5, 2016, assessing $762 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Heart O' Texas Council of The Boy Scouts of America, Docket No. 2016-0257-PWS-E on October 5, 2016, assessing $725 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Consolidated Water Supply Corporation, Docket No. 2016-0280-PWS-E on October 5, 2016, assessing $351 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Millersview-Doole Water Supply Corporation, Docket No. 2016-0286-PWS-E on October 5, 2016, assessing $702 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Marisol Mgt. LLC dba Marisols Convenience Store, Docket No. 2016-0305-PST-E on October 5, 2016, assessing $7,734 in administrative penalties with $1,546 deferred. Information concerning any aspect of this order may be obtained by contacting Anthony Rios, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Big Star Rv Park, LLC, Docket No. 2016-0315-PWS-E on October 5, 2016, assessing $660 in administrative penalties with $660 deferred. Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sunoco Partners Marketing & Terminals L.P., Docket No. 2016-0357-AIR-E on October 5, 2016, assessing $9,600 in administrative penalties with $1,920 deferred. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Chemical LP, Docket No. 2016-0406-AIR-E on October 5, 2016, assessing $7,688 in administrative penalties with $1,537 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Monarch Utilities I L.P., Docket No. 2016-0428-PWS-E on October 5, 2016, assessing $172 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding New Braunfels Utilities, Docket No. 2016-0429-MWD-E on October 5, 2016, assessing $27,000 in administrative penalties with $5,400 deferred. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Red River Authority of Texas, Docket No. 2016-0438-PWS-E on October 5, 2016, assessing $1,260 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kwik Chek Food Stores, Inc. dba Kwik Chek 32, Docket No. 2016-0542-PST-E on October 5, 2016, assessing $8,438 in administrative penalties with $1,687 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201605121
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Correction to Agreed Order Number 8

In the August 5, 2016, issue of the *Texas Register* (41 TexReg 5805), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 8 for City of Alpine. The reference to penalty and enforcement coordinator should be corrected to read: PENALTY: $4,125; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6156;

For questions concerning this error, please contact Michael Parrish at (512) 239-2548.

TRD-201605098
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 4, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of City of Santa Rosa

SOAH Docket No. 582-17-0376

TCEQ Docket No. 2013-1987-MWD-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. - October 27, 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 June 13, 2016, concerning assessing administrative penalties against and requiring certain actions of the City of Santa Rosa, for violations in Cameron County, Texas, of: Texas Water Code §26.121(a)(1); 30 Texas Administrative Code §305.125(1) and (17); Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010330001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6, Monitoring and Reporting Requirement No. 1, and Sludge Provisions; and TCEQ Agreed Order Docket No. 2011-0886-MWD-E, Ordering Provisions Nos. 2.a.i, 2.a.ii., 2.b., and 2.c.

The hearing will allow the City of Santa Rosa, 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 the City of Santa Rosa, 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 the City of Santa Rosa 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.** The City of Santa Rosa, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 305; Texas 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 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, 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.

TRD-201605109
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Hassan Ahmad Andjai Shree Ambe Corporation dba 18th Street Food Mart

SOAH Docket No. 582-17-0512

TCEQ Docket No. 2015-1780-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. - November 3, 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 August 9, 2016 concerning assessing administrative penalties against and requiring certain actions of Hassan Ahmad and Jai Shree Ambe Corporation d/b/a 18th Street Food Mart, for violations in McLennan County, Texas, of: Texas Water Code §26.3467(a) and §26.3475(c)(1) and (d) and 30 Texas Administrative Code §37.815(a) and (b); §334.8(c)(4)(A)(vii), (c)(5)(A)(i), and (c)(5)(B)(ii); §334.49(c)(2)(C) and (c)(4)(C); §334.50(b)(1)(A); and §334.602(a).

The hearing will allow Hassan Ahmad and Jai Shree Ambe Corporation d/b/a 18th Street Food Mart, 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 Hassan Ahmad and Jai Shree Ambe Corporation d/b/a 18th Street Food Mart, 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 Hassan Ahmad and Jai Shree Ambe Corporation d/b/a 18th Street Food Mart 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.** Hassan Ahmad and Jai Shree Ambe Corporation d/b/a 18th Street Food Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, and 30 Texas Administrative Code chs. 37, 70, and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Admin-

istrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative 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.

TRD-201605110
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of KCWS II, Inc. DBA Complete Care Automotive

SOAH Docket No. 582-17-0378

TCEQ Docket No. 2016-0074-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. - October 27, 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 July 13, 2016 concerning assessing administrative penalties against and requiring certain actions of KCWS II, INC. dba Complete Care Automotive, for violations in Jefferson County, Texas, of: Texas Water Code §26.3475(c)(1) and 30 Texas Administrative Code §§334.7(d)(3), 334.50(a), and 334.54(c)(2).

The hearing will allow KCWS II, INC. dba Complete Care Automotive, 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 KCWS II, INC. dba Complete Care Automotive, 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 KCWS II, INC. dba Complete Care Automotive 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. KCWS II, INC. dba Complete Care Automotive, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7 and 26 and 30 Texas Administrative Code chs. 70 and 334; Texas 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 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Elizabeth Harkrider, 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: September 29, 2016

TRD-201605111
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Texas Architectural Aggregate, Inc.

SOAH Docket No. 582-17-0377

TCEQ Docket No. 2015-1825-WQ-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. - October 27, 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 July 7, 2016 concerning assessing administrative penalties against and requiring certain actions of Texas Architectural Aggregate, Inc., for violations in Llano County, Texas, of: 40 C.F.R. §122.26(c) and 30 Texas Administrative Code §§281.25(a)(4) and 342.25(b).

The hearing will allow Texas Architectural Aggregate, Inc., 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 Texas Architectural Aggregate, Inc., 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 Texas Architectural Aggregate, Inc. 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. Texas Architectural Aggregate, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054 and chs. 7, 26, and 28A, 40 C.F.R. ch. 122, and 30 Texas Administrative Code chs. 70, 281, and 342; Texas 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 Texas Administrative Code §§70.108 and 70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jess Robinson, 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: September 29, 2016

TRD-201605112

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 5, 2016

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0015460001

APPLICATION. Texas Providence Investments, LLC, 10600 Richmond Avenue, Houston, Texas 77042, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015460001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day.

The facility will be located at 13722 Kluge Road, in Cypress, Harris County, Texas 77429. The treated effluent will be discharged to a Harris County Flood Control District detention pond; thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The unclassified receiving water use is minimal aquatic life use for the Harris County Flood Control District detention pond. The designated uses for Segment No. 1009 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Cypress Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.973055&lng=- 95.638055&zoom=13&type=r. For the exact location, refer to the application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the formal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period

can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, November 14, 2016 at 7:00 P.M.

SPJST Lodge No. 196

17810 Huffmeister Road

Cypress, Texas 77429

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov.

Si desea información en español, puede llamar al (800) 687-4040.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Texas Commission on Environmental Quality Region 12 Office, 5425 Polk Street, Suite H, Houston, Texas. Further information may also be obtained from Texas Providence Investments, LLC, at the address stated above or by calling Ms. Shelly Young, P.E., Manager, WaterEngineers, Inc., at (281) 373-0500.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: October 4, 2016

TRD-201605113
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit Proposed Permit No. 2392

APPLICATION. Glasscock County, 117 East Currie, Garden City, Glasscock County, Texas 79739, owner/operator of a proposed Type I Arid Exempt Municipal Solid Waste Landfill, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit authorizing the acceptance of residential and commercial municipal solid waste, as well as some non-hazardous Class 2 and Class 3 industrial waste. The landfill will be located at 420 Drumright Road, Garden City, Glasscock County, Texas 79739. The TCEQ received this application on July 21, 2016. The permit application is available for viewing and copying at the Glasscock County Courthouse, 117 East Currie, Garden City, Glasscock County, Texas 79739. The following website provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.06469&lng=- 101.4721&zoom=13&type=r. For exact location, refer to application.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or

the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at www.tceq.texas.gov/about/comments.html or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087.

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. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Glasscock County at the address stated above or by calling Mr. Todd E. Stiggins, P.E., Project Manager with Parkhill, Smith, & Cooper at (806) 473-3683.

TRD-201605119
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Notice of Water Rights Application

Notice issued September 30, 2016

APPLICATION NO. 14-1793A; George Sultemeier and Jean Sultemeier, 12735 Treadwell Lane, Fort McKavett, Texas 76841, Applicants, have applied for an amendment to Certificate of Adjudication No. 14-1793 to change the diversion point to three new downstream diversion points on the San Saba River, Colorado River Basin in Menard County, Texas. The application was received on November 6, 2015. Additional information and fees were received on February 17, and 18, and April 6, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 24, 2016. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, the installation of screens on new diversion structures and the installation of metering devices. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below, by October 17, 2016.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201605120
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 5, 2016

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: 8-Day Pre-Election Report due February 22, 2016 for Candidates

Read King, 8901 Harvest Moon Trl., Denton, Texas 76210-7174

Matthew W. Shrum, 808 West Ave., Austin, Texas 78701-2208

Deadline: Runoff Report due May 16, 2016 for Candidates

Brent Webster, P.O. Box 171012, Austin, Texas 78717-0038

Deadline: Semiannual Report due July 15, 2016 for Candidates

Lee C. Crisp, 6920 Fall Creek Hwy., Granbury, Texas 76049

Deadline: Semiannual Report due July 15, 2016 for Committees

Sandra Crenshaw, Democrats for the People Voice, 2018 Lanark Ave., Dallas, Texas 75203

Larry Inman, YES! Our Kids. Our Future., 138 Windham Cir., Coppell, Texas 75019

Elizabeth F. Limon, Bexar County Senatorial District 19 Tejano Democrats, 574 Kendalia, San Antonio, Texas 78221

Jacob Limon, Revolution Texas, 1802 Ann Arbor, Austin, Texas 78704

Diana Tang, Elect Jasmine L. Jenkins, 1826 Wheeler St., Houston, Texas 77004

Deadline: Lobby Activities Report due July 11, 2016

Frank R. Santos, 1001 Congress Ave., Ste. 100, Austin, Texas 78701

TRD-201605062

Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: September 29, 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 May 31, 2016, through June 3, 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, October 7, 2016. The public comment period for this project will close at 5:00 p.m. on Saturday, November 5, 2016.

FEDERAL AGENCY ACTIONS:

Applicant: Bureau of Ocean Energy Management (BOEM)

Location: Gulf of Mexico

Project Description: The Bureau of Ocean Energy Management (BOEM), with the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) and the Bureau of Safety and Environmental Enforcement (BSEE) as cooperating agencies, is preparing a Programmatic EIS pursuant to the National Environmental Policy Act (NEPA). BOEM and NMFS intend for this Programmatic EIS to provide the necessary documentation and analyses to support informed decisions regarding future Outer Continental Shelf Lands Act (OCSLA) Permit and Marine Mammal Protection Act (MMPA) Authorization actions related to G&G activities on the OCS. In addition, the preparation of this Programmatic EIS will help to ensure compliance with other applicable laws and statutes such as the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Coastal Zone Management Act (CZMA), and the National Historic Preservation Act (NHPA).

CMP Project No: 17-1017-F4

Applicant: National Oceanic and Atmospheric Administration (NOAA)

Location: Gulf of Mexico

Project Description: Pursuant to the action requested by the Gulf of Mexico Fishery Management Council, the National Marine Fisheries Service (NMFS) would promulgate a new rule to implement Amendment 43 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Gulf).The purpose of this action is to 1) redefine the geographic range of the West Florida hogfish stock, 2) set status determination criteria including the maximum fishing mortality threshold, minimum stock size threshold, and maximum sustainable yield proxy for the West Florida hogfish stock, 3) set annual catch limits for the West Florida hogfish stock based on a recent stock assessment, 4) increase the hogfish minimum size limit to 14 inches fork length to reduce the likelihood of season closures, and 5) remove the powerhead exception for the harvest of hogfish in the Gulf of Mexico stressed area.

CMP Project No: 17-1017-F4

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 Mr. Jesse Solis, P.O. Box 12873, Austin, Texas 78711-2873, or via email at *federal.consistency@glo.texas.gov.* Comments should be sent to Mr. Solis at the above address or by email.

TRD-201605118
Anne L. Idsal
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 5, 2016

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Texas Health and Human Services Commission

Public Notice - Termination of NorthSTAR Behavioral Health Services Waiver

The Texas Health and Human Services Commission is requesting the Centers for Medicare & Medicaid Services (CMS) approve the termination of the waiver for NorthSTAR Behavioral Health Services model. The proposed effective date for the termination is December 31, 2016.

Effective January 1, 2017, individuals receiving NorthSTAR services will transition all NorthSTAR waiver services to other managed care programs as follows: individuals age 21 and over will receive Medicaid medical and behavioral health services through STAR and STAR+PLUS Medicaid managed care organizations (MCOs). Individuals under the age of 21 will receive these same Medicaid services through the new STAR Kids program beginning November 1, 2016.

Individuals transitioning from receiving behavioral health benefits through NorthSTAR, will continue to have access to the same Medicaid service array in their STAR, STAR+PLUS, and STAR Kids plans. MCOs in the NorthSTAR service delivery area are required to offer contracts to all current NorthSTAR service providers; the State does not expect any disruption or changes to services and/or service providers.

To obtain copies of the proposed waiver termination, interested parties may contact John Rubisoff by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711-3247, phone (512) 487-3437, fax (512) 730-7477, or by e-mail at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201605095
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: October 3, 2016

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Texas Department of Housing and Community Affairs

Notice of Public Hearing - Multifamily Housing Revenue Bonds (EMLI at Liberty Crossing Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Ferris Public Library, 301 E. 10th Street, Ferris, Texas 75125 at 4:00 p.m. on November 1, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $25,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Liberty Crossing TC I, LP., a Texas limited partnership, or a related person or affiliate thereof (the "Borrower"), to finance the costs of acquiring and constructing a multifamily housing development. The housing development is described as follows: an approximately 252-unit multifamily housing development to be located at approximately 307 South Goode Road, Wilmer, Dallas County, Texas 75172 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or *shannon.roth@tdhca.state.tx.us.*

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201605080
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 3, 2016

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Texas Department of Insurance

Company Licensing

Application for CATAMARAN INSURANCE OF OHIO, INC., a foreign life, accident and/or health company, to change its name to OPTUM INSURANCE OF OHIO, INC. The home office is in Irvine, California.

Application for MOSAIC INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to METROMILE INSURANCE COMPANY. The home office is in San Francisco, California.

Application for SETON HEALTH PLAN, INC., a domestic Health Maintenance Organization, DBA (doing business as) DELL CHILDREN'S HEALTH PLAN. The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201605114
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: October 5, 2016

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Texas Lottery Commission

Powerball® Game Grand Prize Carry Forward Pool Maximum Balance Amounts and Balance Limiter Triggers

The Texas Lottery Commission's "Powerball®" On-Line Game Rule, at 16 TAC §401.317(d)(1)(B)(iii), provides that the Grand Prize Carry Forward Pool (GPCFP) shall have a maximum balance or balance limiter triggers that are set by the Multi-State Lottery Association (MUSL) Powerball Product Group and are detailed in the Comments to the MUSL Powerball Game Rules. The MUSL Powerball Product Group has established a balance limit trigger for the GPCFP as follows: At any time that the GPCFP is below forty-five million dollars ($45,000,000) prior to a drawing, the GPCFP deduction from a Party Lottery's Grand Prize Pool contribution for that drawing shall be equal to a maximum of four percent (4%) of a Party Lottery's sales when the annuity Grand Prize, as determined after sales are known, exceeds one hundred twenty million dollars ($120,000,000.00); the GPCFP percentage shall be reduced by the percentage of sales being actually contributed to the Powerball Set-Aside Pool, Set Prize Reserve Account, or Prize Reserve Account. At any time that the GPCFP exceeds forty-five million dollars ($45,000,000) prior to a drawing, there shall be no GPCFP deduction for that drawing.

TRD-201605094
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 3, 2016

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

McKinney Falls State Park, Travis County

In a meeting on November 3, 2016 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the Executive Director to sell an undeveloped tract of land of approximately seven acres located on Stassney Lane across from McKinney Falls State Park in Travis County. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201605122

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: October 5, 2016

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Public Utility Commission of Texas

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on September 29, 2016, to amend a certificate of convenience and necessity for a proposed transmission line in Montgomery County, Texas.

Docket Style and Number: Application of Entergy Texas, Inc. to Amend its Certificate of Convenience and Necessity for a 230-kV Transmission Line in Montgomery County (Heights Substation To Line 822), Docket Number 46408.

The Application: The application of Entergy Texas, Inc., for a proposed 230-kV transmission line is designated as the Heights Substation to Line #822 Cut-in 230-kV Transmission Line Project. The proposed transmission line would connect the new Heights Substation, which will be located at the northeast intersection of Northgate Lane and FM 1314, to ETI's existing China-to-Porter 230-kV transmission line (Line #822), at a point along the line that is approximately 5,400 feet southeast of Gene Campbell Boulevard. The proposed line and substation would both be located in the southeastern portion of Montgomery County. The total estimated cost for the project is approximately $19.8 million.

The proposed project is presented with a single route and is approximately 1.4 miles in length. ETI has obtained prior written consent of each landowner whose property will be crossed by the new facilities. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is November 14, 2016. 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 46408.

TRD-201605078
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2016

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Notice of Application to Amend a Sewer 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 sewer certificate of convenience and necessity (CCN) in Comal County.

Docket Style and Number: Application of SJWTX Inc., d/b/a Canyon Lake Water Service Company to Amend a Certificate of Convenience and Necessity in Comal County, Docket Number 46413.

The Application: The SJWTX Inc., d/b/a Canyon Lake Water Service Company filed an application to amend its sewer CCN Number 20877 in Comal County. The total area being requested includes approximately 266 acres of land and no current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46413.

TRD-201605103
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 4, 2016

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Notice of Application to Amend a Sewer 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 sewer certificate of convenience and necessity (CCN) in Montgomery County.

Docket Style and Number: Application of MSEC Enterprises, Inc. to Amend a Sewer Certificate of Convenience and Necessity in Montgomery County, Docket Number 46412.

The Application: MSEC Enterprises, Inc. filed an application to amend its sewer CCN Number 20984 in Montgomery County. The total area being requested includes approximately 38 acres of land and no current customers.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46412.

TRD-201605106
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 4, 2016

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Notice of Application to Amend a 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 a water certificate of convenience and necessity (CCN) and decertify a portion of a certificate in Hidalgo County.

Docket Style and Number: Application of the City of Donna to Amend a Certificate of Convenience and Necessity and Decertify a Portion of North Alamo Water Supply Corporation's Certificate in Hidalgo County, Docket Number 46411.

The Application: The City of Donna filed an application to amend its water CCN Number 12790 and to decertify a portion of North Alamo Water Supply Corporation's CCN in Hidalgo County. The total area being requested includes approximately 57 acres of land certificated by North Alamo Water Supply Corporation under CCN Number 10553.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46411.

TRD-201605105
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 4, 2016

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Notice of Application to Amend a Water Certificate of Convenience and Necessity and Obtain a Sewer 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 and obtain a sewer certificate of convenience and necessity (CCN) in Montgomery County, Texas.

Docket Style and Number: Application of City of Oak Ridge North to Amend a Water Certificate of Convenience and Necessity and Obtain a Sewer Certificate of Convenience and Necessity in Montgomery County, Docket Number 46403.

The Application: City of Oak Ridge North filed an application to amend its water CCN Number 12230 and obtain a new sewer CCN in Montgomery County. Oak Ridge seeks to obtain dual certification with Eastwood Hills Subdivision's CCN and a portion of Chateau Wood Municipal Utility District's CCN.

Persons wishing to intervene or comment on the action sought should contact the commission 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46403.

TRD-201605072
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 30, 2016

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Texas Veterans Commission

Accepting Membership Applications for Advisory Committees

The Texas Veterans Commission ("Commission") is accepting applications to fill membership vacancies on the following committees: **Veterans Employment and Training Advisory Committee, Fund for Veterans' Assistance (FVA) Advisory Committee, Veterans Communication Advisory Committee, and Veterans County Service Officer Advisory Committee.**

Each committee is composed of nine (9) members who are appointed by the Commission. The term of office for each member is two (2) years (staggered terms). Committees are required to meet at least four (4) times a year. The Fund for Veterans' Assistance Advisory Committee may meet as needed to make grant recommendations to the Commission. Committees generally meet at Commission headquarters in Austin, Texas, or via telephone conference. Committee membership is voluntary, and the Commission is not currently authorized to reimburse members for their travel expenses.

Committees. Each advisory committee will review issues and provide advice to the Commission, as charged by the Commission.

Veterans Employment and Training Advisory Committee - Seeks the input of employers to better assist veterans in gaining successful employment and/or training.

Fund for Veterans' Assistance Advisory Committee - Evaluates grant applications and makes recommendations to the Commission.

Veterans Communication Advisory Committee - Develops recommendations to improve communications with veterans, their families, and the general public regarding the services provided by the Texas Veterans Commission and information on benefits and assistance available to veterans from federal, state, and private entities.

Veterans County Service Officer Advisory Committee - Develops recommendations to improve the support and training of Veterans County Service Officers and to increase coordination between Veterans County Service Officers and the Commission related to the statewide network of services being provided to veterans.

Qualifications for Membership. Veterans are strongly preferred. Applicants should identify how they meet the following qualifications for each committee:

Veterans Employment and Training Advisory Committee - Individuals who are recognized authorities in the fields of business, employment, training, rehabilitation or labor or are nominated by veterans' organizations that have a national employment program.

Fund for Veterans' Assistance Advisory Committee - Representatives from veterans' organizations, non-profit or philanthropic organizations, veterans or family members of veterans, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose. **NOTE:** FVA Advisory Committee members may not include officers, directors or employees of organizations or entities that have an open Fund for Veterans' Assistance grant during the member's tenure or that intend to submit an application for a Fund for Veterans' Assistance grant.

Veterans Communication Advisory Committee - Representatives from the communications industry, state agencies, the Texas National Guard, U.S. Armed Forces reserve components, and other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

Veterans County Service Officer Advisory Committee - Current, former or retired Veterans County Service Officers, and may include representatives from veterans' organizations or other individuals with the experience and knowledge to assist the committee with achievement of its purpose.

Application for Membership. To apply for membership on any of the advisory committees, please submit an online application through the Commission's website at *http://www.tvc.state.tx.us/Advisory-Committees.aspx.*

Deadline for Application. Applications must be received by the Commission no later than **5:00 p.m. (Central Time), Monday, October 24, 2016,** to be considered for membership on a committee.

TRD-201605108
Cruz Montemayor
Deputy Director
Texas Veterans Commission
Filed: October 4, 2016

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Texas Workforce Commission

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Workforce Commission (the Commission) will review and make a decision on the management fee rate charged by the central nonprofit agency, TIBH Industries Inc., for its services to the community rehabilitation programs and operation of the State Use Program for Fiscal Year 2017 as required by §122.019(e) of the Texas Human Resources Code. This review will be considered by the Commission no earlier than Tuesday, December 20, 2016, in an Open Meeting, notice of which is posted in the *Texas Register* and on the Commission's website: *http://www.twc.state.tx.us/events.*

The Commission's meeting will be held at the Texas Workforce Commission Building, 101 East 15th Street, Room 244, Austin, Texas. TIBH Industries Inc. has requested that the Commission set the Fiscal Year 2017 management fee rate at 6% of the sales price for products, 6% of the contract price for services and 5% of the contract price for temporary staffing services. The Commission seeks public comment on TIBH Industries Inc.'s management fee rate request as required by §122.030 of the Texas Human Resources Code.

Comments should be submitted in writing on or before November 18, 2016 to Kelvin Moore of the Purchasing from People with Disabilities Section of TWC, 101 East 15th Street Room 316T, Austin, Texas 78711, or via email to: *kelvin.moore@twc.state.tx.us.*

TRD-201605063
Diane Parker
Assistant General Counsel
Texas Workforce Commission
Filed: September 29, 2016

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Request for Comment Regarding the Services Performed by TIBH Industries Inc.

Notice is hereby given that the Texas Workforce Commission (the Commission) intends to review the services provided by the Central Nonprofit Agency (agency), TIBH Industries Inc., for Fiscal Year 2016 as required by §122.019(c) of the Texas Human Resources Code. As required by that section, the Commission will review the performance of TIBH to determine whether that agency's performance complies with the Commission's contractual specifications. This review will be considered by the Commission no earlier than Tuesday, December 20, 2016, in an Open Meeting posted in the *Texas Register* and on the Commission's website at *http://www.twc.state.tx.us/events.*

The Commission's meeting will be held at the Texas Workforce Commission Building, 101 East 15th Street, Room 244 Austin, Texas. The Commission requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program, under §122.019(a) - (b) of the Texas Human Resources Code no later than November 18, 2016. Comments shall be submitted to Kelvin Moore, Program Manager, 101 E. 15th St., Room 316-T, Austin, Texas 78701, or via email to: *kelvin.moore@twc.state.tx.us.*

TRD-201605064
Diane Parker
Assistant General Counsel
Texas Workforce Commission
Filed: September 29, 2016

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Workforce Solutions for the Heart of Texas

Request for Proposal

The Heart of Texas Workforce Development Board, Inc. (dba) Workforce Solutions for the Heart of Texas is soliciting proposals for Fiscal Monitoring and Program Monitoring Assistance. Proposals are due on October 21, 2016 by 4:30 p.m. Any proposal received after that time and date will not be considered.

For bid specifications and submission requirements, the Request for Proposal is available on the Workforce Solutions for the Heart of Texas website at *www.hotworkforce.com.*

The Heart of Texas Workforce Development Board, Inc. reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer. Programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-7352989/1-800 -735-2988 (voice).

TRD-201605096
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: October 3, 2016

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How to Use the Texas Register

Information Available: The sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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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