TEXAS REGISTER

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Thomas Huizar

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

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

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Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(512) 463-5561
FAX (512) 463-5569

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

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RULE REVIEW

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IN ADDITION

Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1093-GA

Requestor:

The Honorable Jim Murphy

Chairman, Partnership Advisory Commission

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768

Re: Whether the Partnership Advisory Commission is subject to the requirements of the Open Meetings Act (RQ-1093-GA)

Briefs requested by November 26, 2012

RQ-1094-GA

Requestor:

The Honorable R. Scott McKee

Henderson County District Attorney

173rd Judicial District

109 West Corsicana, Suite 103

Athens, Texas 75751

Re: Whether article 42.12, section 15(h) of the Code of Criminal Procedure, which authorizes a judge to award confined defendants time credit for participation in an educational, vocational or treatment program, violates the Texas Constitution (RQ-1094-GA)

Briefs requested by November 26, 2012

RQ-1095-GA

Requestor:

The Honorable Richard R. Hicks, III

Caldwell County Criminal District Attorney

Caldwell County Courthouse

Post Office Box 869

Lockhart, Texas 78644

Re: Whether a commissioners court may change the designated day of the week it convenes during the current fiscal year under section 81.005, Local Government Code (RQ-1095-GA)

Briefs requested by November 28, 2012

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

TRD-201205570
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 29, 2012

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 357. HEARINGS

SUBCHAPTER A. UNIFORM FAIR HEARING RULES

1 TAC §357.17

The Texas Health and Human Services Commission (HHSC) proposes to amend §357.17, concerning types of hearings.

Background and Justification

On December 12, 2011, the Centers for Medicare and Medicaid Services (CMS) approved HHSC's application for a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. §1315). The Texas Healthcare Transformation and Quality Improvement Program waiver relates to the Medicaid State of Texas Access Reform (STAR) and STAR+PLUS programs, and children's Medicaid dental services (collectively "waiver programs"), and includes special terms and conditions under which these managed care programs should operate. The special terms and conditions include a requirement that Medicaid clients receiving services through a managed care organization (MCO) must exhaust their MCO's expedited appeals process before making a request for an expedited fair hearing from HHSC. Although this arrangement has been HHSC's practice for all Medicaid managed care programs, including the waiver programs, it is not addressed currently in rule.

A fair hearing is an informal proceeding held before an impartial HHSC hearings officer in which a client appeals an agency or MCO action. Medicaid clients are entitled to a fair hearing to appeal certain agency or MCO actions, such as denials or limited authorizations of services. An individual who believes and can demonstrate that a delay in receiving a Medicaid fair hearing could seriously jeopardize his or her life or health may request an expedited fair hearing. The amendment to §357.17 is proposed to clearly state in rule that a client receiving Medicaid services through an MCO must exhaust the MCO's expedited appeals process before requesting an expedited fair hearing from HHSC, unless the MCO has not sent a timely response to the request or the MCO has denied the request.

Section-by-Section Summary

The amendment to §357.17 adds new language to subsection (b)(2), which concerns expedited appeals for individuals whose health is jeopardized, to require a member of an MCO to exhaust his or her MCO's expedited appeals process before requesting an expedited fair hearing from HHSC.

The amendment to §357.17 also adds new subparagraphs (A) and (B) under subsection (b)(2). Subparagraph (A) establishes an exception to the requirement that a member exhaust the MCO's expedited appeals process before requesting an expedited fair hearing from HHSC. The member can request a fair hearing if the MCO has not sent a written notice denying the request for an expedited appeal, or a written notice of the outcome of the expedited appeal, within the specified time frames. Subparagraph (B) states that the MCO must comply with federal requirements regarding continuation of benefits during the expedited appeals process.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five years the proposed amendment will be in effect, enforcing or administering the amendment does not have foreseeable implications relating to costs or revenues of the state or local governments.

Public Benefit and Costs

Chris Traylor, Chief Deputy Commissioner for HHSC, has determined that, for each year of the first five years the amendment will be in effect, the public benefit expected as a result of adopting the proposed amendment is that HHSC's policy regarding expedited fair hearings will be clearly stated in rule for members of Medicaid managed care organizations.

Mr. Traylor anticipates that there will not be an economic cost to persons who are required to comply with the amendment.

This proposal will not affect a local economy.

Small Business and Micro-business Impact Analysis

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment, because the amendment will not require them to alter their business practices.

Regulatory Analysis

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

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her real property that would otherwise

exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Texas Government Code.

Public Comment

Written comments on the proposal may be submitted to Elizabeth LaMair, Health and Human Services Commission, Managed Care Operations, MC-H320, Braker Center H320, P.O. Box 85200, Austin, TX 78708-5200; by fax to (512) 491-1969; or by e-mail to elizabeth.lamair@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for November 28, 2012 from 9:00 a.m. to 10:00 a.m. (central time) in the Health and Human Services Braker Center, Lone Star Conference Room, located at 11209 Metric Boulevard, Building H, Austin, Texas. Persons requiring further information, special assistance or accommodations should contact Leigh A. Van Kirk at (512) 491-2813.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas and to adopt rules and standards for program administration.

The amendment affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§357.17. Types of Hearings.

(a) Telephone and In-Person Hearings.

(1) The hearings officer conducts fair hearings by telephone ensuring that all parties are able to hear and respond to each other;

(2) An appellant may request that a hearing be conducted in person; and

(3) The hearings officer determines whether good cause for an in-person hearing exists.

(b) Expedited Appeals. The following hearings are expedited:

(1) Hearings for Transients--Transient appeals are SNAP and/or TANF appeals submitted by an appellant who plans to move from the jurisdiction of the hearings officer before the hearing decision would normally be issued. An example of a transient appeal is an appeal filed by a household that includes migrant farm workers. The hearing must be held and a decision made within 15 working days from the date the hearings officer receives the hearing request if:

(A) the appellant agrees to the reduced notice of the time, date, and place of the hearing; and

(B) the hearings officer has sufficient information available to make a decision without requesting additional information.

(2) Hearings for Individuals Whose Health Is Jeopardized--Any individual who believes and can demonstrate that a delay in his Medicaid hearing could seriously jeopardize his life or health may request an expedited fair hearing. Except as provided in subparagraph (A) of this paragraph, an individual receiving Medicaid services through a managed care organization (MCO) must exhaust the MCO's expedited appeals process before requesting an expedited fair hearing from the Health and Human Services Commission (HHSC). An individual does not need to exhaust the MCO's expedited appeals process before requesting a fair hearing that follows HHSC's standard fair hearing processes.

(A) An MCO must send an individual who has requested an expedited appeal a written notice of the outcome of the appeal, or a written notice denying the request. The individual may request an expedited fair hearing if the MCO has not sent a notice by the following deadlines:

(i) for requests relating to ongoing medical or dental emergencies or denials of continued hospitalization, no later than one business day after the MCO received the request; or

(ii) for all other requests, no later than three business days after the MCO received the request.

(B) During the expedited appeals process, an MCO must comply with the requirements of 42 C.F.R. §438.420, regarding the continuation of benefits.

(c) Group Hearings--The hearings officer may consolidate hearings, upon request of multiple appellants, if the sole issue involved in the cases is one of Federal or State law or policy. In all cases except SNAP cases, the request must be in writing, signed by each appellant, and state the common issue(s). Requests for group hearings in SNAP cases may be made orally or in writing. An appellant may also withdraw from a group hearing at any time before a final decision is issued. If an appellant wishes to withdraw, he must submit a signed request in writing. Group hearings follow the same procedures as individual hearings.

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

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205527
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS

DIVISION 1. DELINQUENT LIST

16 TAC §45.121

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.121, concerning Credit Restrictions and Delinquent List for Liquor.

When this section was originally adopted in 2009, the commission indicated that it would periodically review it and shorten the

time allowed from the end of the reporting period to the date of publication of the Delinquent List. The commission proposes to amend the section to give retailers two fewer days to pay a delinquent bill before their names appear on the Delinquent List. When a retailer's name appears on the Delinquent List, all wholesalers are on notice that they may not sell any liquor to that retailer until that delinquent account is paid in full, pursuant to the Texas Alcoholic Beverage Code (Code) §102.32(d).

Steve Greinert, Director of the Tax and Label Approval Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

Because the proposed amendment simply moves the commission's rules to be in closer compliance with what the Code already requires, the proposed amendment will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission beyond what the Code already requires. For the same reason, there is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the regulatory scheme established in the Code to encourage prompt payment of bills will be further promoted. This regulatory scheme is designed to protect the three-tier system, whereby the interests of retailers and wholesalers are distinguished and protected.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3480. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted rule pursuant to Texas Government Code §2001.033, if the commission decides to adopt a rule in this proceeding.

The staff of the commission will hold a public hearing to receive oral comments on December 13, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 10:00 a.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Texas Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Texas Alcoholic Beverage Code (Code) §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code; and the Code §102.32(f), which requires the commission to adopt rules to give effect to that section.

The proposed amendment affects the Code §5.31 and §102.32.

§45.121. Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This section [~~rule~~] implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the day it is required to be paid by §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 of the Code for resale to ultimate consumers in unbroken packages.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.state.tx.us.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at http://www.tabc.state.tx.us. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in this paragraph or in subsection (k) of this section, the [~~The~~] Delinquent List will be published the 29th [~~1st~~] day of the month for purchases made from the 1st to the 15th day of the [~~preceding~~] month and[~~,~~] for which payment was not made on or before the 25th day of the [~~preceding~~] month. When the month of February contains only 28 days, the Delinquent List will be published March 1 for purchases made from the 1st to the 15th day of February and for which payment was not made on or before the 25th day of February. Except as otherwise specified in subsection (k) of this section, the [~~The~~] Delinquent List will be published the 14th [~~16th~~] day of the month for purchases made between the 16th and the last day of the preceding month and for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

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

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

TRD-201205558
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 206-3443

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CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER TRAINING

SUBCHAPTER E. SELLER SERVER CERTIFICATES

16 TAC §50.40

The Texas Alcoholic Beverage Commission (commission) proposes new §50.40, relating to Mandatory Charge to Student, in accordance with Government Code §2001.021 and §31.3 of the commission's rules, both of which relate to petitions for rulemaking.

On August 9, 2012, the commission received a petition for rulemaking dated August 3, 2012 from Mark S. Brown of Practical Training, a classroom-based provider of seller server training courses offered pursuant to Chapter 50 of the commission's rules. The petition asked the commission to consider two new rules. One would establish a base mandatory fee for the seller server course in an initial amount of $25. That proposal is the subject of this rulemaking proceeding. The other proposed new rule (§50.41), which is the subject of a separate rulemaking proceeding, would require that all seller server courses be a minimum of 120 minutes (excluding polling, registration and testing).

Government Code §2001.021(c) provides that no later than the 60th day after the date of submission of a petition for rulemaking, a state agency shall either deny the petition in writing or initiate a rulemaking proceeding. Section 31.3(e) of the commission's rules similarly provides that a petition for rulemaking must be denied, or accepted in whole or in part, within 60 days from the date it is submitted.

The commission did not meet in time to consider the petition for rulemaking within the 60 days designated by Government Code §2001.021(c) or by §31.3(e) of its own rules. Therefore, the commission is required to initiate a rulemaking proceeding pursuant to those provisions.

Initiating a rulemaking proceeding does not mean that the rule proposed in the petition is or will be approved or adopted. Instead, it means that the rule proposed in the petition will be the subject of a rulemaking proceeding under Subchapter B of Chapter 2001 of the Government Code, relating to Administrative Procedure. Under these sections, a proposed rule is published in the *Texas Register.* The commission receives public comment and decides whether to adopt the rule, with or without modifications to the published version. Major changes to the published proposal require republication of the modified rule as a new proposal. If no action is taken on a proposed rule within six months of the date it is published in the *Texas Register,* it is withdrawn by operation of law.

Furthermore, initiating a rulemaking proceeding because the commission did not act within 60 days to deny a petition does not imply that the commission endorses or approves of the policy or language of the proposed rule. It does mean that the commission will receive comments and evaluate the proposal considering both the comments and its own expertise and experience before deciding whether to adopt the rule.

Mindy Carroll, Director of the Education and Prevention Division, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government.

The proposed new rule will not have an adverse economic impact on small business. It has been proposed by a micro-business through a petition for rulemaking in the belief that it will provide a positive economic benefit to small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment, and the petitioner believes there may be a positive impact.

Ms. Carroll has determined that for each year of the first five years that the proposed new rule will be in effect, the public would benefit if the petitioner is correct that the commission's establishment of a minimum base price for seller server courses results in more revenue for all schools. However, the commission believes that the benefit to the schools of raising prices to the student may result in fewer retail licensees and permittees requiring that their employees become seller server certified. In that instance, there would be an adverse impact to the public's safety and welfare. The commission invites comments on whether the public will benefit if the proposed rule is adopted.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted rule pursuant to Government Code §2001.033, if the commission decides to adopt a rule in this proceeding. Please contact Mr. Wilson if you would like to receive a copy of the original petition for rulemaking filed by Mark S. Brown of Practical Training, which required that this rulemaking proceeding be initiated.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on December 7, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 10:00 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted new rule, if the commission chooses to adopt a new rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and by Alcoholic Beverage Code §106.14(b), which requires the commission to adopt rules or policies establishing the minimum requirements for approved seller training programs.

The proposed new rule affects Alcoholic Beverage Code §5.31 and §106.14.

§50.40. Mandatory Charge to Student.

A base mandatory fee shall be imposed for the seller server course of no less than $25 per student. An increase or decrease may be imposed every five years based on the cost of living index. This mandatory base fee may be used to order approved certification certificates, pay instructors, administrators, and shareholders, and/or to offset costs of in-house training programs.

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

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

TRD-201205559
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 206-3443

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16 TAC §50.41

The Texas Alcoholic Beverage Commission (commission) proposes new §50.41, relating to Minimum Time Requirement, in accordance with Government Code §2001.021 and §31.3 of the commission's rules, both of which relate to petitions for rulemaking.

On August 9, 2012, the commission received a petition for rulemaking dated August 3, 2012 from Mark S. Brown of Practical Training, a classroom-based provider of seller server training courses offered pursuant to Chapter 50 of the commission's rules. The petition asked the commission to consider two new rules. One would require that all seller server courses be a minimum of 120 minutes (excluding polling, registration and testing). That proposal is the subject of this rulemaking proceeding. The other proposed new rule (§50.40), which is the subject of a separate rulemaking proceeding, would establish a base mandatory fee for the seller server course in an initial amount of $25.

Government Code §2001.021(c) provides that no later than the 60th day after the date of submission of a petition for rulemaking, a state agency shall either deny the petition in writing or initiate a rulemaking proceeding. Section 31.3(e) of the commission's rules similarly provides that a petition for rulemaking must be denied, or accepted in whole or in part, within 60 days from the date it is submitted.

The commission did not meet in time to consider the petition for rulemaking within the 60 days designated by Government Code §2001.021(c) or by §31.3(e) of its own rules. Therefore, the commission is required to initiate a rulemaking proceeding pursuant to those provisions.

Initiating a rulemaking proceeding does not mean that the rule proposed in the petition is or will be approved or adopted. Instead, it means that the rule proposed in the petition will be the subject of a rulemaking proceeding under Subchapter B of Chapter 2001 of the Government Code, relating to Administrative Procedure. Under these sections, a proposed rule is published in the *Texas Register.* The commission receives public comment and decides whether to adopt the rule, with or without modifications to the published version. Major changes to the published proposal require republication of the modified rule as a new proposal. If no action is taken on a proposed rule within six months of the date it is published in the *Texas Register,* it is withdrawn by operation of law.

Furthermore, initiating a rulemaking proceeding because the commission did not act within 60 days to deny a petition does not imply that the commission endorses or approves of the policy or language of the proposed rule. It does mean that the commission will receive comments and evaluate the proposal considering both the comments and its own expertise and experience before deciding whether to adopt the rule.

Mindy Carroll, Director of the Education and Prevention Division, has determined that for each year of the first five years that the proposed new rule will be in effect, there will be no fiscal impact on state or local government.

The proposed new rule will not have an adverse economic impact on small business. It has been proposed by a micro-business through a petition for rulemaking in the belief that it will provide a positive economic benefit to small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment, and the petitioner believes there may be a positive impact.

Ms. Carroll has determined that for each year of the first five years that the proposed new rule will be in effect, the public would benefit if the petitioner is correct that the commission's establishment of a minimum time requirement of 120 minutes for all courses would preserve the integrity of the program and produce more responsible sellers and servers who would therefore reduce the number of alcohol-related incidents. However, the commission has not observed an increase in the number of violations in minor sting operations since the minimum course time was reduced to 120 minutes from 200 minutes. Similarly, Texas Department of Transportation data from 2011, the first year of the reduced minimum course time, shows a decrease in the number of DUI fatalities. The commission invites comments on whether the public will benefit if the proposed rule is adopted.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted rule pursuant to Government Code §2001.033, if the commission decides to adopt a rule in this proceeding. Please contact Mr. Wilson if you would like to receive a copy of the original petition for rulemaking filed by Mark S. Brown of Practical Training, which required that this rulemaking proceeding be initiated.

The staff of the commission will hold a public hearing to receive oral comments on the proposed new rule on December 7, 2012 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 10:00 a.m. The Commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. The commission's response to comments received at the public hearing will be in the preamble to the adopted new rule, if the commission chooses to adopt a new rule. Staff will not respond to comments at the public hearing. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed new rule is authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Code, and by Alcoholic Beverage Code §106.14(b), which requires the commission to adopt rules or policies establishing the minimum requirements for approved seller training programs.

The proposed new rule affects Alcoholic Beverage Code §5.31 and §106.14.

§50.41. Minimum Time Requirement.

All seller server courses shall be a minimum of 120 minutes excluding identity polling, registration and testing. Students completing the individual sections or overall course in less time than the allotted time will be required to do exercises pertaining to the section until the minimum standard of 120 minutes is met. To maintain the integrity of the seller server program this must be done in a seamless fashion.

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

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

TRD-201205561
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 206-3443

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 70. TECHNOLOGY-BASED INSTRUCTION

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING THE TEXAS VIRTUAL SCHOOL NETWORK (TxVSN)

19 TAC §§70.1001, 70.1003, 70.1005, 70.1007, 70.1009, 70.1011, 70.1013, 70.1015, 70.1017, 70.1019, 70.1021, 70.1023, 70.1025, 70.1027, 70.1029, 70.1031, 70.1033, 70.1035

The Texas Education Agency (TEA) proposes new §§70.1001, 70.1003, 70.1005, 70.1007, 70.1009, 70.1011, 70.1013, 70.1015, 70.1017, 70.1019, 70.1021, 70.1023, 70.1025, 70.1027, 70.1029, 70.1031, 70.1033, and 70.1035, concerning the Texas Virtual School Network (TxVSN). The proposed new rules would provide guidance for school districts, charter schools, and other entities participating in the TxVSN, in accordance with the Texas Education Code (TEC), Chapter 30A.

In 2003, the 78th Texas Legislature established the electronic course program, allowing districts to offer electronic courses through a full-time online program. The TEC, Chapter 30A, State Virtual School Network, added by the 80th Texas Legislature, 2007, provided for the establishment of a state virtual school network to provide supplemental online courses to high school students. In 2009, House Bill 3646, 81st Texas Legislature, incorporated the electronic course program under the state virtual school network.

The TEC, §30A.051(b), authorizes the commissioner of education to adopt rules necessary to implement the state virtual school network, including the establishment of requirements for an informed choice report, procedures governing the verification of teacher professional development, and a standard agreement governing the payment of fees for courses taken through the state virtual school network. The proposed new 19 TAC Chapter 70, Subchapter AA, would establish the following provisions.

Proposed new §70.1001, Definitions, would define applicable words and terms.

Proposed new §70.1003, Texas Virtual School Network Governance, would establish the administrative functions and responsibilities related to the TxVSN program.

Proposed new §70.1005, Texas Virtual School Network Course Requirements, would address required criteria for electronic courses offered through the TxVSN and conditions an entity must meet to offer a course for submission. The proposed new rule would also outline the appeals process for courses that are not approved.

Proposed new §70.1007, Texas Virtual School Network Provider District Eligibility and Program Requirements, would address the eligibility requirements for entities to serve as provider districts in the TxVSN statewide course catalog.

Proposed new §70.1009, Texas Virtual School Network Online School Eligibility, would set forth the eligibility criteria for an entity to serve as a TxVSN online school.

Proposed new §70.1011, Texas Virtual School Network Online School Program Requirements, would establish the program requirements for TxVSN online schools, including application for approval to serve specific grade levels and approval for maximum enrollments.

Proposed new §70.1013, Texas Virtual School Network Student Eligibility, would address the criteria for students to enroll in courses offered through the TxVSN, including full-time enrollment.

Proposed new §70.1015, Texas Virtual School Network Enrollment, Advancement, and Withdrawal, would establish enrollment requirements for students taking courses through the TxVSN statewide course catalog or the online schools program. The proposed rule would also establish guidelines for withdrawal from and successful completion of TxVSN courses.

Proposed new §70.1017, Texas Virtual School Network Compulsory Attendance, would establish that students are not required to be in physical attendance while participating in TxVSN courses and that if a student successfully completes a course or program, the student is considered to have met all attendance requirements for that course or program.

Proposed new §70.1019, Public or Private Institutions of Higher Education, would establish guidelines under which a Texas public or private institution of higher education could serve students across the state through the TxVSN.

Proposed new §70.1021, Private Entities Providing Online Courses, would clarify that private entities supplying courses through the TxVSN are not accredited or approved by the TEA or the State of Texas.

Proposed new §70.1023, Accountability, would address the requirement that public school students enrolled in courses offered through the TxVSN Online School (OLS) program take all required state assessments. The proposed rule would also establish that school districts and charter schools participating in the TxVSN OLS program will be included in the state accountability system.

Proposed new §70.1025, Statewide Course Catalog Fees, would set forth criteria related to fees that may be charged for enrollment in courses offered through the TxVSN.

Proposed new §70.1027, Requirements for Educators of Electronic Courses, would establish the professional development requirements for teachers of online courses offered through the TxVSN and requirements for districts and charter schools regarding the maintenance of records documenting the completion of professional development.

Proposed new §70.1029, Texas Virtual School Network Participation and Performance Standards, would address the standards a school district or charter school must meet in order to continue to participate in the TxVSN and would establish the conditions under which a school district or charter school might have its participation in the TxVSN revoked.

Proposed new §70.1031, Informed Choice Reports, would identify the information to be included on required informed choice reports for each electronic course offered through the TxVSN.

Proposed new §70.1033, Local Policy Regarding Electronic Courses, would address the requirement that each school district and charter school adopt a policy regarding student enrollment in the TxVSN statewide course catalog.

Proposed new §70.1035, Rights Concerning the Texas Virtual School Network, would set forth requirements regarding notification to parents and students of opportunities to enroll in courses offered through the TxVSN and would outline student rights regarding enrollment. The proposed new rule would also outline the appeal process for a school district's or charter school's decision to deny a request to enroll a student in an electronic course offered through the TxVSN.

Entities participating as providers in the TxVSN must provide certain information, including submitting courses for review, notifying parents and students of a student's acceptance to participate in a TxVSN online, and making informed choice reports available.

Participating school districts and charter schools will be required to retain all financial and programmatic records specific to the TxVSN contract, including documentation of teacher certification and professional development, documentation of students' successful completion, verification of compulsory attendance, documentation of fiscal management, records that support program of instruction, and records that document student participation in the TxVSN online school and grades earned.

Anita Givens, associate commissioner for standards and programs, has determined that for the first five-year period the new sections are in effect there will be no additional costs for state or local government as a result of enforcing or administering the new sections.

Ms. Givens has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections would be providing students with additional course options and flexibility in completing course requirements for graduation. Additionally, the proposed new sections would provide for an additional alternative educational setting for students in Grades 3-8. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

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

The public comment period on the proposal begins November 9, 2012, and ends December 10, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 9, 2012.

The new sections are proposed under the TEC, §30A.051(b), which authorizes the commissioner of education to adopt rules necessary to implement the TEC, Chapter 30A, State Virtual School Network.

The new sections implement the TEC, §30A.051(b).

§70.1001. Definitions.

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

(1) Electronic course--An educational course in which instruction and content are delivered primarily over the Internet, a student and teacher are in different locations for a majority of the student's instructional period, most instructional activities take place in an online environment, the online instructional activities are integral to the academic program, extensive communication between a student and a teacher and among students is emphasized, and a student is not required to be located on the physical premises of a school district or charter school. An electronic course is the equivalent of what would typically be taught in one semester. For example: English IA is treated as a single electronic course and English IB is treated as a single electronic course.

(2) Successful course completion--The term that applies when a student taking a high school course has demonstrated academic proficiency of the content for a high school course and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s), sufficient to earn credit for the course.

(3) Successful program completion--The term that applies when a student in Grades 3-8 has demonstrated academic proficiency and has earned a minimum passing grade of 70% or above on a 100-point scale, as assigned by the properly credentialed online teacher(s) for the educational program, sufficient for promotion to the next grade level.

(4) Texas Virtual School Network (TxVSN)--A state-led initiative for online learning rather than a telecommunications or information services network. The TxVSN is comprised of two components, the statewide course catalog and the online school program. Authorized by the Texas Education Code (TEC), Chapter 30A, the TxVSN is a partnership network administered by the Texas Education Agency (TEA) in coordination with regional education service centers (ESCs),

Texas public school districts and charter schools, and institutions of higher education.

(5) TxVSN central operations--The regional education service center that carries out the day-to-day operations of the TxVSN, including the centralized student registration system, statewide course catalog listings, and other administrative and reporting functions.

(6) TxVSN online school--A Texas public school district or charter school that meets eligibility requirements and serves students who are enrolled full time in an approved TxVSN Online School program.

(7) TxVSN Online School (OLS) program--A full-time, virtual instructional program that is made available through an approved provider district and is designed to serve students in Grades 3-12 who are not physically present at school.

(8) TxVSN provider district--An entity that meets eligibility requirements and provides an electronic course through the TxVSN. Provider districts include providers in the statewide course catalog and TxVSN online schools.

(9) TxVSN receiver district--A Texas public school district or charter school that has students enrolled in the school district or charter school who take one or more online courses through the TxVSN.

(10) TxVSN statewide course catalog--A supplemental online high school instructional program available through approved providers for students in Grades 8-12.

§70.1003. Texas Virtual School Network Governance.

(a) Administration. The Texas Education Agency (TEA) is the administering authority of the Texas Virtual School Network (TxVSN). The role of the administering authority is to:

(1) set standards of quality and ensure compliance with the Texas Education Code (TEC), §30A.051;

(2) establish the policies and procedures necessary for operation of the TxVSN; and

(3) oversee the course review process.

(b) Agency authority. The TEA may conduct routine audits, monitoring, and other investigations of TxVSN central operations, course review, and TxVSN provider and receiver districts to determine compliance and ensure high-quality education as authorized in the TEC or other law. For audit purposes, participants must maintain documentation to support the requirements of the TxVSN program and any agreements.

(c) Central operations. For courses offered through the TxVSN statewide course catalog, the TxVSN central operations shall:

(1) coordinate course registration and student enrollments;

(2) ensure the eligibility of TxVSN providers;

(3) publish an online listing of approved courses; and

(4) coordinate reporting requirements.

§70.1005. Texas Virtual School Network Course Requirements.

(a) All electronic courses to be made available through the Texas Virtual School Network (TxVSN) shall be reviewed and approved prior to being offered.

(1) Each electronic course approved for inclusion in the TxVSN shall:

(A) be in a specific subject that is part of the required curriculum;

(B) be aligned with the Texas Essential Knowledge and Skills (TEKS) approved for implementation in a given school year for a grade level at or above Grade 3;

(C) be the equivalent in instructional rigor and scope to a course that is provided in a traditional classroom setting during:

(i) a semester of 90 instructional days; and

(ii) a school day that meets the minimum length of a school day;

(D) be led by a qualified teacher and designed specifically for an online learning environment, including instructional tools, assessment features, and collaborative communication tools as appropriate;

(E) be aligned with the current International Association for K-12 Learning (iNACOL) National Standards for Quality Online Courses;

(F) meet accessibility requirements established by the U.S. Rehabilitation Act, §508; the World Wide Web Consortium's (W3C) Web Content Accessibility Guidelines; and TxVSN accessibility guidelines; and

(G) ensure that each student enrolled in a TxVSN electronic course takes any applicable assessment instrument required under the Texas Education Code, §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor.

(2) Secondary (Grades 6-12) science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry as required by §74.3(b)(2)(C) of this title (relating to Description of a Required Secondary Curriculum).

(3) An Advanced Placement (AP) course must have documented approval from the College Board as an AP course prior to submission for TxVSN course review.

(4) If the TEKS with which an approved course is aligned are modified, the provider district or school shall be provided the same time period to revise the course to achieve alignment with the modified TEKS as is provided for the modification of a course provided in a traditional classroom setting.

(5) An online dual credit course to be offered as part of the TxVSN shall be submitted for review and approval prior to being offered.

(6) If the administering authority does not approve an electronic course, a provider district or school may appeal to the commissioner of education.

(A) A TxVSN provider must obtain support from the local governing board in order to appeal to the commissioner regarding the administering authority's refusal to approve an electronic course.

(B) If the commissioner determines that the administering authority's evaluation did not follow the criteria or was otherwise irregular, the commissioner may overrule the administering authority and place the course in the TxVSN course catalog.

(C) The commissioner's decision under this section is final and may not be appealed.

(b) A Texas public school district or charter school may apply to the commissioner for a waiver of the course review requirement if the school district or charter school certifies that courses they will offer meet all of the requirements of subsection (a)(1) of this section.

(1) A school district or charter school that receives a waiver of this requirement shall ensure that students enrolled in online courses that have not gone through the course review process perform at a rate at least equal to that of the district or charter as a whole.

(2) A school district or charter school that does not maintain student performance at least equal to that of the district or charter as a whole may be required to submit courses for review as a condition of continued participation in the TxVSN.

§70.1007. Texas Virtual School Network Provider District Eligibility and Program Requirements.

(a) The following entities are eligible to serve as Texas Virtual School Network (TxVSN) provider districts:

(1) a Texas school district that is rated acceptable as described in the Texas Education Code (TEC), §39.054. A Texas school district may provide an electronic course through the TxVSN to:

(A) students enrolled in that district or school; or

(B) students enrolled in another school district or school in the state;

(2) a charter school that is rated recognized or higher as described in the TEC, §39.202, except that a campus may act as a provider district to students receiving educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice if the campus is rated acceptable under the TEC, §39.054. A charter school may provide an electronic course through the TxVSN to:

(A) students within the school district in which the campus is located or within its service area, whichever is smaller;

(B) students enrolled in another school district or school in the state through an agreement with the school district in which the student resides; or

(C) students enrolled in another school district or school in the state if the student receives educational services under the supervision of a juvenile probation department, the Texas Juvenile Justice Department, or the Texas Department of Criminal Justice through an agreement with the applicable agency;

(3) a Texas public or private institution of higher education that provides a course through the TxVSN statewide course catalog; and

(4) an education service center that adheres to the general provisions of the TEC, Chapter 8, and that provides a course through the TxVSN statewide course catalog.

(b) TxVSN provider districts shall:

(1) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting;

(2) notify students in writing upon acceptance to participate in the TxVSN online school with specific dates and details regarding enrollment;

(3) meet all federal and state requirements for educating students with disabilities;

(4) provide a contingency plan for the continuation of instructional services to all TxVSN Online School (OLS) program students allowing them to complete their TxVSN OLS program subject areas or courses in the event that the contract or agreement through which the TxVSN OLS program instructional services are provided is terminated or a TxVSN OLS program subject area or course becomes unavailable to the student; and

(5) ensure a maximum class size limit of 40 students in a single section of a course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less.

§70.1009. Texas Virtual School Network Online School Eligibility.

(a) To be eligible to serve as a Texas Virtual School Network (TxVSN) online school, a school district or charter school shall:

(1) have a current accreditation status of Accredited as specified in §97.1055 of this title (relating to Accreditation Status);

(2) be rated acceptable as described in the Texas Education Code, §39.054;

(3) be rated at the Standard Achievement level or higher under the state financial accountability rating system as specified in §109.1003 of this title (relating to Types of Financial Accountability Ratings);

(4) have met statutory requirements for timely submission of annual audit and compliance reports, Public Education Information Management System (PEIMS) reports, and timely deposits with the Teacher Retirement System, with all records and reports reflecting satisfactory performance; and

(5) be in good standing with other programs, grants, and projects administered through the Texas Education Agency (TEA).

(b) Based on the most recent available status as of the beginning of a school year, the TEA may suspend a TxVSN Online School (OLS) program that no longer meets the requirements of subsection (a) of this section.

§70.1011. Texas Virtual School Network Online School Program Requirements.

(a) A Texas Virtual School Network (TxVSN) online school may serve students in Grades 3-12, but may not serve students in Kindergarten-Grade 2.

(b) A school district or charter school wishing to operate a TxVSN online school in order to serve students in full-time virtual instruction shall, prior to the start of each academic year, notify the Texas Education Agency (TEA) of grade levels to be served and the total number of students to be served during that academic year. A school district or charter school may not add grade levels after the start of the school year.

(c) A TxVSN online school or a school district or charter school wishing to begin operating a TxVSN online school shall certify that the online school has courses sufficient to comprise a full instructional program for each grade level served by the online school prior to serving that grade level.

(d) School districts or charter schools approved to serve as TxVSN online schools shall follow the TEA procedures related to obtaining a campus number for the virtual campus through which they serve their TxVSN online school students.

(e) School districts and charter schools serving as TxVSN online schools shall:

(1) follow the same laws and rules that apply to traditional schools unless otherwise indicated in this chapter;

(2) verify the identity and eligibility of each student seeking to enroll full time in TxVSN online courses;

(3) notify parents and students of the option to enroll in the TxVSN online school at the time and in the manner that the school district or charter school informs students and parents about instructional programs or courses offered in the district's or school's traditional classroom setting;

(4) notify students in writing upon acceptance to participate in the TxVSN online school with specific dates and details regarding enrollment;

(5) document actual dates each student begins and ends enrollment in student data records for local recordkeeping purposes and for state funding reporting purposes;

(6) ensure that each student enrolled in the TxVSN online school takes any applicable assessment instrument required under the Texas Education Code, §39.023, according to the standard administration schedule and that each assessment is supervised by a proctor;

(7) allow access to proctored test administrations by any personnel or agent of the TEA;

(8) adopt an instructional calendar for the TxVSN online school and keep an instructional calendar for each TxVSN online school student on file and make these records available to the TEA, upon request in the requested electronic format;

(9) meet all federal and state requirements for educating students with disabilities;

(10) publish on the school district's or charter school's Internet website an Informed Choice Report that includes all of the components required under §70.1031 of this title (relating to Informed Choice Reports);

(11) provide a contingency plan for the continuation of instructional services to all TxVSN Online School (OLS) program students allowing them to complete their TxVSN OLS program subject areas or courses in the event that the contract or agreement through which the TxVSN OLS program instructional services are provided is terminated or a TxVSN OLS program subject area or course becomes unavailable to the student;

(12) ensure a maximum class size limit of 40 students in a single section of a Grades 5-12 course and ensure that the class size does not exceed the maximum allowed by law and a charter school's charter, as applicable, whichever is less;

(13) organize, retain in a centralized unit or office within the organizational structure of the TxVSN online school, and make available to the TEA, upon request in the requested electronic format, the following:

(A) all fiscal documentation;

(B) detailed records that support the program of instruction; and

(C) detailed records that document student participation in the TxVSN online school and grades earned;

(14) require contractors to retain and make available to the TEA, upon request in the requested electronic format, any and all financial and programmatic records, including books, documents, papers, and records, which are directly pertinent to that specific contract for a minimum of seven years from the day the final state funding payment is made and all other pending matters are closed, including resolution of any audits that started within the seven-year retention period, in accordance with the record retention requirements for federal and state programs as mandated by the Texas State Library and Archives Commission; and

(15) ensure the ongoing security of all data and its accessibility to the TEA in the requested electronic format.

(f) School districts and charter schools serving as TxVSN online schools may:

(1) determine the number of courses a student takes at one time based on individual student needs; however, course placement decisions must enable a student to make reasonable progress toward graduation in a timely manner;

(2) lend equipment to a student and the parents/legal guardians of a student participating in the TxVSN online school for the duration of the student's enrollment in the TxVSN online school; and

(3) reimburse a student or the parents/legal guardians of a student participating in the TxVSN online school for Internet connectivity for the duration of the student's participation in the TxVSN online school.

(g) School districts and charter schools serving as TxVSN online schools may not:

(1) deny participation to any student based on ability, language, disability, socio-economic status, or access to or familiarity with technology required for completion of the course or instructional program;

(2) give a student or the parents/legal guardians of a student participating in the TxVSN OLS program ownership of any equipment; or

(3) provide payment to a student or the parents/legal guardians of a student participating in the TxVSN OLS program for:

(A) TxVSN OLS program subject areas or courses;

(B) services or materials; or

(C) any other purpose, other than reimbursement for Internet connectivity for the duration of the student's participation in the TxVSN OLS program.

(h) Charter schools serving as TxVSN online schools shall:

(1) operate in compliance with their charter and applicable laws, rules, and regulations;

(2) continue current education programs and activities at existing physical location(s) and offer the education program as described in the charter;

(3) obtain approval from the commissioner of education for a charter amendment to change the educational program prior to making the change in the educational program as required in §100.1033(c) of this title (relating to Charter Amendment); and

(4) count students enrolled in the TxVSN online school toward the charter's enrollment cap and ensure that the charter does not exceed their total enrollment cap.

§70.1013. Texas Virtual School Network Student Eligibility.

(a) A student is eligible to enroll in a course provided by the Texas Virtual School Network (TxVSN) only if:

(1) the student on September 1 of the school year:

(A) is younger than 21 years of age; or

(B) is younger than 26 years of age and entitled to the benefits of the Foundation School Program under the Texas Education Code, §42.003;

(2) the student has not graduated from high school; and

(3) the student:

(A) is otherwise eligible to enroll in a public school in this state; or

(B) the student is a dependent of a member of the United States military, was previously enrolled in high school in this state, and no longer resides in this state as a result of a military deployment or transfer.

(b) A student is eligible to enroll full time in courses provided through the TxVSN only if:

(1) the student was enrolled in a public school in this state for at least one full grading period in the preceding school year;

(2) the student has been placed in substitute care in this state, regardless of whether the student was enrolled in a public school in this state in the preceding school year; or

(3) the student:

(A) is a dependent of a member of the United States military;

(B) was previously enrolled in high school in this state; and

(C) no longer resides in this state as a result of a military deployment or transfer.

§70.1015. Texas Virtual School Network Enrollment, Advancement, and Withdrawal.

(a) A student taking a course through the Texas Virtual School Network (TxVSN) statewide course catalog or a TxVSN Online School (OLS) program is considered to:

(1) be enrolled in a TxVSN course when he or she begins receiving instruction and actively engages in instructional activities in a TxVSN subject area or course;

(2) have successfully completed a course if the student demonstrates academic proficiency and earns credit for the course, as determined by the TxVSN teacher; and

(3) be, and must be reported as, withdrawn from the TxVSN when the student is no longer actively participating in the TxVSN course or program.

(b) A student taking a course through the TxVSN statewide course catalog:

(1) shall enroll in each TxVSN course through the TxVSN online registration system;

(2) shall be assigned a grade by the TxVSN teacher after the drop period established by TxVSN central operations;

(3) may withdraw from a course taken through the TxVSN after the instructional start date without academic or financial penalty within the drop period established by TxVSN central operations; and

(4) shall have the grade assigned by the TxVSN teacher added to the student's transcript by the student's home district.

(c) A student enrolled full time in Grades 3-8 must demonstrate academic proficiency sufficient to earn promotion to the next grade, as determined by the TxVSN teacher for the educational program.

(d) A student who transfers from one educational setting to another after beginning enrollment in an electronic course is entitled to continue enrollment in the course.

§70.1017. Texas Virtual School Network Compulsory Attendance.

(a) Texas public school students are not required to be in physical attendance while participating in courses through a Texas Virtual School Network (TxVSN) online school or the TxVSN course catalog.

(b) Based upon successful completion of a TxVSN course for students in Grades 9-12 or a TxVSN Online School (OLS) instructional program for students in Grades 3-8, students are considered to have met attendance requirements for that course or program. A student who has successfully completed the grade level or course is eligible to receive any weighted funding for which the student is eligible.

(c) For audit purposes, TxVSN course providers and TxVSN receiver districts shall maintain documentation to support the students' successful completion and to support verification of compulsory attendance.

§70.1019. Public or Private Institutions of Higher Education.

Public or private institutions of higher education participating as Texas Virtual School Network (TxVSN) provider districts shall:

(1) serve students statewide. TxVSN student enrollments are not subject to service area priorities or restrictions;

(2) enroll students through the standardized requirements and application/enrollment process approved by TxVSN central operations or the TxVSN online school; and

(3) use the articulation agreement available through TxVSN central operations or the TxVSN online school.

§70.1021. Private Entities Providing Online Courses.

Private entities that supply online courses offered by Texas Virtual School Network provider districts as authorized under the Texas Education Code, Chapter 30A, do not become public schools by that relationship. Only school districts and charter schools may claim to be Texas public schools or to be accredited or approved by the Texas Education Agency or the State of Texas. The vendor of the course may not claim those designations in its advertising and informational materials.

§70.1023. Accountability.

(a) All Texas public school students enrolled in courses through the Texas Virtual School Network (TxVSN) are required to take the statewide assessments as required in the Texas Education Code, §39.023.

(b) All school districts and charter schools participating in the TxVSN are included in the state's academic accountability system.

§70.1025. Statewide Course Catalog Fees.

(a) A school district or charter school may charge a fee for enrollment in an electronic course provided through the Texas Virtual School Network (TxVSN) statewide course catalog to a student who resides in Texas and is enrolled in a school district or charter school as a full-time student and enrolled in a course load greater than that normally taken by students in the equivalent grade level.

(1) A school district or charter school that is not the provider district or charter school may charge a student a nominal fee, not to exceed $50, for enrollment in an electronic course provided through the TxVSN.

(2) A juvenile probation department or state agency may charge a comparable fee to a student under the supervision of the department or agency.

(b) A school district or charter school may charge a fee for enrollment in an electronic course provided through the TxVSN during the summer.

(c) A school district or charter school shall charge a fee for enrollment in an electronic course provided through the TxVSN to a

student who resides in Texas and is not enrolled in a school district or charter school.

(1) TxVSN central operations may only accept course payment from a school district or charter school.

(2) The fee for a TxVSN course may not exceed the lesser of the cost of providing the course or $400.

(d) A TxVSN statewide course catalog provider district shall receive:

(1) no more than 70% of the catalog course cost prior to a student successfully completing the course; and

(2) the remaining 30% of the catalog course cost when the student successfully completes the course.

§70.1027. Requirements for Educators of Electronic Courses.

(a) Each teacher of an electronic course, including a dual credit course, offered through the Texas Virtual School Network (TxVSN) by a provider district must be certified under the Texas Education Code (TEC), Chapter 21, Subchapter B, to teach that course and grade level or meet the credentialing requirements of the institution of higher education with which they are affiliated and that is serving as a provider district. In addition, each teacher:

(1) must:

(A) successfully complete a professional development course or program approved by TxVSN central operations before teaching an electronic course offered through the TxVSN;

(B) have a graduate degree in online or distance learning and have demonstrated mastery of the International Association for K-12 Learning (iNACOL) National Standards for Quality Online Teaching; or

(C) have two or more years of documented experience teaching online courses for students in Grades 3-12 and have demonstrated mastery of the iNACOL National Standards for Quality Online Teaching; and

(2) must successfully complete one continuing professional development course specific to online learning every three years.

(b) Each teacher of an electronic course, including a dual credit course, offered through the TxVSN by a provider district must meet highly qualified teacher requirements under the Elementary and Secondary Education Act, as applicable.

(c) The iNACOL National Standards for Quality Online Teaching are adopted by the commissioner of education as the objective standard criteria for quality of an electronic professional development course as required by the TEC, §30A.113.

(1) A school district or charter school shall submit to TxVSN central operations any course the school district or charter school seeks to provide to teachers for authorization to teach electronic courses provided through the TxVSN.

(2) The Texas Education Agency (TEA) shall use the most recent iNACOL National Standards for Quality Online Teaching to evaluate professional development courses submitted by a school district or charter school for approval.

(d) School districts and charter schools serving as TxVSN provider districts shall affirm the preparedness of teachers of TxVSN electronic courses to teach public school-age students in a highly interactive online classroom and shall:

(1) maintain records documenting:

(A) successful initial completion of TxVSN-approved professional development, evidence of prior online teaching, or a graduate degree in online or distance learning; and

(B) teachers' demonstrated mastery of the iNACOL National Standards for Quality Online Teaching prior to teaching through the TxVSN;

(2) maintain records of successful completion of continuing professional development;

(3) maintain records documenting successful completion of TxVSN-approved professional development before the end of the school year for any teacher who is hired after the school year has begun; and

(4) make the records specified in this subsection available to the TEA and TxVSN central operations upon request.

§70.1029. Texas Virtual School Network Participation and Performance Standards.

The commissioner of education may revoke the right to participation in the Texas Virtual School Network (TxVSN) based on any of the following factors:

(1) noncompliance with relevant state or federal laws;

(2) noncompliance with requirements and assurances outlined in the contractual agreements with TxVSN central operations and/or the provisions of this subsection and the Texas Education Code, Chapter 30A; or

(3) consistently poor student performance rates as evidenced by results on statewide student assessments, student withdrawal rates, student completion rates, successful completion rates, and campus accountability ratings.

§70.1031. Informed Choice Reports.

The Texas Virtual School Network (TxVSN) website shall include Informed Choice Reports for each electronic course offered through the TxVSN that:

(1) provide the school year calendar for the instructional program;

(2) describe the instructional program;

(3) identify the Learning Management System (LMS), which is the software application for the administration, documentation, tracking, reporting, and delivery of online education courses;

(4) describe each electronic subject area or course offered, including:

(A) subject area or course requirements and prerequisites, as applicable;

(B) the Public Education Information Management System (PEIMS) course title and number;

(C) the number of credits to be earned for a high school course;

(D) a course syllabus for Grades 9-12 or a course overview and lesson guide for Grades 3-8; and

(E) indication of Advanced Placement (AP), Southern Association of Colleges and Schools (SACS), and National Collegiate Athletic Association (NCAA) approval, as applicable for a high school course;

(5) identify all required materials provided by the receiver district or provider district outside the LMS and all materials required to be obtained by the student;

(6) identify technical system requirements, minimum bandwidth, video player, and plug-in requirements; and

(7) identify software and browser compatibility needed to complete the course.

§70.1033. Local Policy Regarding Electronic Courses.

Each school district and charter school shall adopt a policy consistent with §70.1035 of this title (relating to Rights Concerning the Texas Virtual School Network) that provides students enrolled in the school district or charter school with the opportunity to enroll in courses provided through the Texas Virtual School Network statewide course catalog.

§70.1035. Rights Concerning the Texas Virtual School Network.

(a) At the time and in the manner that a school district or charter school informs students and parents about courses that are offered in the district's or school's traditional classroom setting, the district or school shall notify parents and students of the option to enroll in an electronic course offered through the Texas Virtual School Network (TxVSN).

(b) A school district or charter school in which a student is enrolled as a full-time student may not unreasonably deny the request of a parent/legal guardian of a student to enroll the student in an electronic course offered through the TxVSN.

(c) A school district or charter school is not considered to have unreasonably denied a request to enroll a student in an electronic course if:

(1) the district or school can demonstrate that the electronic course does not meet state standards or standards of the district or school that are of equivalent rigor as the district's or school's standards for the same course provided in a traditional classroom setting;

(2) a student attempts to enroll in a course load that:

(A) is inconsistent with the student's high school graduation plan; or

(B) could reasonably be expected to negatively affect the student's performance on an assessment instrument administered under the Texas Education Code, §39.023; or

(3) the student requests permission to enroll in an electronic course at a time that is not consistent with the enrollment period established by the school district or charter school providing the course.

(d) Notwithstanding subsection (c)(3) of this section, a school district or charter school that provides an electronic course through the TxVSN shall make all reasonable efforts to accommodate the enrollment of a student in the course under special circumstances.

(e) A parent/legal guardian may appeal to the commissioner of education a school district's or charter school's decision to deny a request to enroll a student in an electronic course offered through the TxVSN.

(1) The parent shall submit a written request to the commissioner within ten business days of receiving a final decision in the local grievance process that the student was denied the opportunity to enroll in an electronic course offered through the TxVSN in accordance with guidelines established by the Texas Education Agency.

(2) An appeal under this section shall be based on review of the local record developed in the grievance process.

(3) If the commissioner determines that a student was unreasonably denied the opportunity to enroll in an electronic course, the school district or charter school shall immediately enroll the student in the electronic course.

(4) The commissioner's decision under this section is final and may not be appealed.

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

Filed with the Office of the Secretary of State on October 24, 2012.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.25

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §371.25, concerning Residency Requirements, Program Responsibilities and Temporary Licensure. The amendment to §371.25 is proposed to increase efficiency in the licensure process for residents in the final year of their approved GPME program by allowing those persons an extra month to begin the application process to other authorities for DPS/DEA registration, Medicaid/Medicare numbers, and other registrations required for a podiatrist to set up a business.

Hemant Makan, Executive Director, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Makan has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be a greater access to podiatry healthcare services since qualified podiatrists will be able to enter the workforce and medical field in a more timely fashion. There will be no effect on small or micro-businesses. There are no economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, janie.alonzo@tsbpme.texas.gov.

The amendment is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The amendment implements Texas Occupations Code, Chapter 202, Subchapter F.

§371.25. Residency Requirements, Program Responsibilities and Temporary Licensure.

(a) All residency programs requesting temporary licenses for the podiatric physicians participating in the program must meet all American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements for accreditation.

(b) The residency director will be held responsible for the entire program including but not limited to:

(1) ensuring that the temporary licensee is practicing within the scope of the residency program requirements;

(2) ensuring that the temporary licensee has read and understood the Act and Rules governing the practice of podiatric medicine; and

(3) ensuring that all residency program attendees are properly licensed with the Board prior to participation in the program pursuant to §371.5(g) of this title (relating to Applicant for License--Temporary License). A temporary license to practice podiatric medicine expires on June 30 of each year.

(c) Within thirty (30) days after [~~of~~] the start date of the program each year, the residency director must report to the Board a list of all residents enrolled in the program, the names of all of the directors in the program and which program each individual is enrolled in.

(d) Temporary Licensure.

(1) All initial residency applicants shall complete the entire application for Temporary License for enrollment in an accredited graduate podiatric medical education (GPME) program.

(2) On application, an established Texas resident who has been initially enrolled and licensed in an accredited GPME program pursuing a second or third year residency shall renew his unexpired license by:

(A) paying to the Board before the expiration date of the license the required renewal fee;

(B) submitting proof of having successfully completed a course in cardiopulmonary resuscitation and provide a current certification to that effect;

(C) completing the "Memorandum of Understanding for Approved Residence Program" (form P6);

(D) completing the "Certificate of Acceptance for Postgraduate Training Program" (form P10).

(3) An applicant who fails to renew a temporary license prior to expiration will be required to submit an entirely new application for renewal.

(4) Established Texas Residents pursuing a second or third year residency will be issued a new Temporary license number upon annual renewal.

(e) The annual renewal application notification will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

(f) Restrictions and Limitations.

(1) As provided under §371.5(g)(3) of this title, a temporary licensee granted a temporary license for the purpose of pursuing a GPME program in the State of Texas shall not engage in the practice of podiatric medicine, whether for compensation or free of charge, outside the scope and limits of the GPME program in which he or she is enrolled.

(2) A temporary license holder shall not be considered to be a fully "Active" licensed podiatrist as provided, in part, under §378.13 of this title (relating to License Activation Renewal) who independently practices podiatric medicine without supervision. A temporary license holder is a person in training and is limited by the GPME program in which he or she is enrolled for residency based supervised patient encounters, supervision of which is designed to protect patients and the citizens of Texas.

(3) A person enrolled in a GPME program at all times must hold a Temporary License and shall not be considered to be qualified for an "Active" license until all residency program requirements have been completed and fulfilled as certified by the GPME program residency director, and all other requirements for "Active" licensure have been attained.

(4) A temporary license holder and an applicant for license under §371.7(g) of this title (relating to Qualifications for Licensure) are not qualified by the Board as meeting the statutory and regulatory requirements for "Active" licensure until the GPME program which was actually begun/matriculated is successfully completed.

(5) All temporary license holders are restricted to the supervised practice that is part of and approved by the accredited GPME training program. Residents are not allowed to practice podiatric medicine that is outside of the approved program.

(6) Residents enrolled in an accredited GPME residency (training) program who hold a "Temporary" license (i.e. No. "T##-####") may prescribe controlled substances under the (training) facility's Texas Department of Public Safety (DPS) and U.S. Drug Enforcement Administration (DEA) registration and remain subject to the supervision of the (training) program and residency director. Under no circumstances are residents allowed to prescribe controlled substances for purposes outside of the approved residency (training) program.

(g) Issuance of Permanent License Pending Completion of the Last Year of Residency.

(1) A holder of a temporary license (i.e. a resident) who has entered the final year of an accredited GPME program, who is in good standing with the GPME program, and who is on course to complete the course in a timely manner, may be permitted to apply for the Board's Spring license examination, provided that the resident has entered and signed the "Memorandum of Understanding for Conditional Issuance of Texas Podiatry License," prescribed by the Board.

(2) A holder of a temporary license (i.e. a resident) who passes the Spring license examination, and who is in compliance with the resident's MOU(s) with the Board, and who meets all other requirements of the law regarding licensure may be issued a permanent license prior to completion of the last year of the residency. The Board offers this option for the issuance of a permanent license prior to successful graduation from the GPME program to facilitate the ability of the resident to begin the application process to other authorities for DPS/DEA registration, Medicaid/Medicare numbers, and other registrations required for a podiatrist to set up a business. The permanent license issued under this subsection will be subject to the resident's MOU under paragraph (1) of this subsection, and to the following conditions and restrictions, in addition to any other provisions in statute and rule applicable to a license to practice podiatry, in general:

(A) The resident must successfully complete and graduate from the resident's accredited GPME program by the date noted in the resident's MOU with the Board, and must submit to the Board proof

of successful completion and graduation within 30 days after the end date of the residency as noted on the MOU. Failure to timely provide the proof the Board requires subjects the permanent license to automatic revocation.

(B) The resident who has received a permanent license prior to successful completion and graduation from an accredited GPME program, and for such period of time while still a resident, shall practice podiatry only under the temporary license, and subject to the scope and limits of the GPME program, and shall not practice podiatry under the permanent license until after successful completion and graduation from the GPME program and after providing to the Board proof of such completion and graduation.

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

Filed with the Office of the Secretary of State on October 23, 2012.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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For further information, please call: (512) 305-7000

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CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §376.37

The Texas State Board of Podiatric Medical Examiners proposes new §376.37, concerning Criminal History Evaluation Letters. The new section is proposed to provide a process by which an individual may request a criminal history evaluation letter regarding the persons eligibility for a license issued by the board.

Hemant Makan, Executive Director, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. Makan has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the new section will be to assist an individual seeking licensure to determine whether or not they are eligible for licensure due to their criminal history. There will be no effect on small or micro-businesses. The economic costs to persons who are required to comply with this new section involve paying the requisite fee to process their request in accordance with 22 TAC §371.3(b)(19).

Comments on the proposal may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, janie.alonzo@tsbpme.texas.gov.

The new section is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The new section implements Texas Occupations Code, §53.102.

§376.37. Criminal History Evaluation Letters.

(a) The purpose of this section is to provide a process by which an individual may request a criminal history evaluation letter regarding the person's eligibility for a license issued by the Texas State Board of Podiatric Medical Examiners, as allowed by Chapter 53, Subchapter D of the Occupations Code.

(b) Prior to applying for licensure, an individual seeking licensure may request that agency staff review the person's criminal history to determine if the person is ineligible for licensure based solely on the person's criminal background.

(c) Requestors must submit their requests in writing along with appropriate fees as provided in §371.3(b)(19) of this title (relating to Fees).

(d) The agency may require additional documentation including fingerprint cards before issuing a criminal history evaluation letter.

(e) The agency shall provide criminal history evaluation letters that include the basis for ineligibility if grounds for ineligibility exist to all requestors no later than the 90th day after the agency receives all required documentation to allow the agency to respond to a request.

(f) If a requestor does not provide all requested documentation within one year of submitting the original request, the requestor must submit a new request along with appropriate fees.

(g) All evaluations letters shall be based on existing law at the time of the request. All requestors remain subject to the requirements for licensure at the time of application and may be determined ineligible under existing law at the time of application. If a requestor fails to provide complete and accurate information to the agency, the agency may invalidate the criminal history evaluation letter.

(h) An individual shall be permitted to apply for licensure, regardless of the agency's determination in a criminal history evaluation letter. However, the filing of an application and tendering of fees does not in any way obligate the Board to admit the applicant to examination or issue a license until such time the applicant has been approved as meeting all requirements for licensure set forth in the Board's laws and rules. No examination fee will be refunded. Applicants who have furnished false information to the Board or who are alleged to be in violation of the Board's laws and rules will be investigated. Such applicants are subject to refusal for admittance to the examination and denial of licensure; Board disciplinary action. Applicants permitted to take the examination are subject to the laws and rules of the Board and to the following conditions. The Board reserves the right to refuse an applicant admittance to the exam if other information comes to the Board's attention prior to the examination date that necessitates barring the applicant from the examination. Furthermore, admittance to the examination is not intended and shall not be construed to imply or constitute a finding of the Board regarding the applicant's fitness to sit for the examination nor as an approval of an application for license after the examination, regardless of the applicant's performance on the exam.

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

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Janie Alonzo
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Texas State Board of Podiatric Medical Examiners
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CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

22 TAC §378.13

The Texas State Board of Podiatric Medical Examiners proposes an amendment to §378.13, concerning License Renewal. The amendment to §378.13 is proposed to clarify the distinction between a "New" license status and an "Active" license status, thereby illustrating what constitutes the practice of podiatry without a license by not activating a new license.

Hemant Makan, Executive Director, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Makan has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to assist patients, hospitals, credentialing committees, insurers, etc. in understanding the difference between a "New" and an "Active" license, and therefore who is authorized to provide podiatric services. There will be no effect on small or micro-businesses. There are no economic costs to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Janie Alonzo, Staff Services Officer V, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216, janie.alonzo@tsbpme.texas.gov.

The amendment is proposed under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The amendment implements Texas Occupations Code, Chapter 202, Subchapter F and G, and Texas Occupations Code, §202.605.

§378.13. License Activation and Renewal.

(a) Upon successfully passing the examination, an applicant is given a "New" designation and then shall submit an "Activation" fee for an "Active" license (i.e. registration for the remainder of the current year) in order to lawfully practice podiatric medicine in the State of Texas. Practice without activating a license is a criminal act in violation of Texas Occupations Code §202.605 "General Criminal Penalty: Practice Without License." If a "New" license is not activated within one year of examination date, the license will be "Cancelled." The applicant is then required to re-submit the entire application and applicable fees for licensure which includes re-taking the examination.

(b) [~~(a)~~] A person may renew his unexpired license by paying to the Board before the expiration date of the license the required renewal fee. A license to practice podiatric medicine expires on October 31 of each year. To be eligible to renew the license, a licensee must comply with the continuing education requirements prescribed by the Board. Upon completion of proper renewal, an annual renewal certificate for the current year will be issued. For purposes of public verification, the license is considered to be in an "Active" status.

(c) [~~(b)~~] A person with an expired license who practices podiatry without an annual renewal certificate for the current year is considered to be practicing without a license and is subject to all the penalties of the practice of podiatry without a license. For purposes of public verification, the license is considered to be in a "Delinquent" status. "Delinquent" license holders will be allowed a 30-day grace period to renew their licenses. Beginning on December 1st of each year, the Board will enforce practicing without a license penalties to include the issuance of Cease & Desist Notices or Orders.

(d) [~~(c)~~] If a person's "Delinquent" license has been expired for 90 days or less, the person may renew the license by paying to the Board a fee equal to 1-1/2 times the required renewal fee.

(e) [~~(d)~~] If a person's "Delinquent" license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to two times the required renewal fee.

(f) [~~(e)~~] If a person's "Delinquent" license has been expired for one year or longer, the person may not renew the license. For purposes of public verification, the license is then considered to have been "Cancelled". The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. The Board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must complete an application prescribed by the Board and pay to the Board a fee that is equal to the examination fee for the license.

(g) [~~(f)~~] The annual renewal application and/or postcard notice will be deemed to be written notice of the impending license expiration forwarded to the person at the person's last known address according to the records of the Board.

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

Filed with the Office of the Secretary of State on October 23, 2012.

TRD-201205507
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 305-7000

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TITLE 25. HEALTH SERVICES

PART 4. ANATOMICAL BOARD OF THE STATE OF TEXAS

CHAPTER 477. DISTRIBUTION OF BODIES

25 TAC §477.7

The Anatomical Board of the State of Texas (Board) proposes an amendment to §477.7 concerning the rules and procedures of the final disposition of the body and disposition of remains. The Board's proposed amendment to §477.7 is to state that blank SAB and procurement and use forms are available for inspection at the Office of the Secretary of State.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed.

Dr. Lee has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit as a result of enforcing or administering the section is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Len Cleary, Ph.D., Secretary/Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The proposed amendment to §477.7 is authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendment affects the Texas Administrative Code, Title 25, Chapter 477.

§477.7. Board Forms.

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

(c) Obtaining forms. A copy [~~Copies~~] of the blank SAB form [~~forms, and yearly cadaver procurement and use report,~~] may be obtained from the secretary-treasurer and is [~~are~~] available for public inspection at the Office of the Secretary of State, Texas Register Division, [~~1019 Brazos Room 245,~~] Austin, Texas [~~78711~~].

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

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

TRD-201205562
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 9, 2012
For further information, please call: (713) 500-5631

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CHAPTER 479. FACILITIES: STANDARDS AND INSPECTIONS

25 TAC §479.4

The Anatomical Board of the State of Texas (Board) proposes an amendment to §479.4 concerning the rules and procedures of the final disposition of the body and disposition of remains. The Board's proposed amendment to §479.4 is to allow the use of alkaline hydrolysis, a new procedure for disposing of remains.

Vaughan Lee, Chairman of the State Anatomical Board, has determined that for each fiscal year of the first five years the section is in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section as proposed.

Dr. Lee has also determined that there are no anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed.

Dr. Lee has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit as a result of enforcing or administering the sections is to effectively regulate the disposition of bodies in Texas, all of which will protect and promote public health, safety, and welfare.

Comments on the proposal may be submitted in writing either in person or by courier to Len Cleary, Ph.D., Secretary/Treasurer, Anatomical Board of the State of Texas, P.O. Box 20745, Houston, Texas 77225-0745. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The proposed amendment to §479.4 is authorized by the Board's general rulemaking power under Health and Safety Code §691.022(b).

The proposed amendment affects the Texas Administrative Code, Title 25, Chapter 479.

§479.4. Final Disposition of the Body and Disposition of the Remains.

(a) (No change.)

(b) Manner of Disposition of Remains. Intact remains shall be disposed of only by cremation or alkaline hydrolysis. The residual remains of these processes [~~Cremated remains~~] shall be disposed of in a manner appropriate to the disposal of human remains or returned to family members. An institution is obligated to return residual [~~cremated~~] remains to family if, at the time of the donation or bequest:

(1) the request is made in writing; and

(2) the institution agrees to this arrangement in writing. In no event may cremated remains be disposed in or as general institutional wastes.

(c) (No change.)

(d) Alkaline hydrolysis at a board-member institution. An institution may operate its own alkaline hydrolysis facility. The facility shall be under the direct control of the Department of Anatomy or the institution's department to which the anatomical program is attached and may be used for no purpose other than the disposition of human remains.

(e) Return of Residual Remains. If residual remains are to be returned to family members, the chamber must be completely cleaned before subsequent use, and the body must not be commingled.

[~~(d) Return of Cremated Remains. If cremated remains are to be returned to family members, the crematory must be completely cleaned before cremation, and the body must be cremated alone.~~]

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

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

TRD-201205560
Len Cleary, Ph.D.
Secretary/Treasurer
Anatomical Board of the State of Texas
Earliest possible date of adoption: December 9, 2012
For further information, please call: (713) 500-5631

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

SUBCHAPTER I. MEDICAL BILL REPORTING

28 TAC §134.803, §134.807

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §134.803, concerning Reporting Standards; and §134.807, concerning State Specific Requirements.

Background

Federal regulations adopted by the Secretary of the Federal Department of Health and Human Services (HHS), in 45 Code of Federal Regulations (CFR) §162.1002 adopt standard medical data code sets that apply to the Medicare system which is regulated by the Centers for Medicare and Medicaid Services (CMS). Relevant to this proposal are the medical data code sets these federal rules adopt for medical diagnoses and inpatient procedures under 45 CFR §162.1002(b)(1). For the period on and after October 16, 2003 through September 30, 2014, the HHS Secretary requires the use of *International Classification of Diseases 9th Edition, Clinical Modification (ICD-9-CM) Volumes 1 and 2* (including The Official ICD-9-CM Guidelines for Coding and Reporting), and for hospital inpatient procedure coding, *International Classification of Diseases, 9th Edition, Clinical Modification, Volume 3 Procedures* (including The Official ICD-9-CM Guidelines for Coding and Reporting) (ICD-9 code sets). For the periods on and after October 1, 2014, the HHS Secretary in 45 CFR §162.1002(c)(2) and (3) requires, for diagnosis coding, the use of *International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM)* (including The Official ICD-10-CM Guidelines for Coding and Reporting), and for hospital inpatient procedure coding, *International Classification of Diseases, 10th Revision Procedure Coding System (ICD-10-PCS)* (including The Official ICD-10-PCS Guidelines for Coding and Reporting) (ICD-10 code sets). The previous compliance date in these federal rules for the ICD-10 code sets was for the period on and after October 1, 2013; however recent amendments to 45 CFR §162.1002(b) and (c) as published in the September 5, 2012 issue of the Federal Register, 77 FR 5420, extend the compliance date for the ICD-10 code sets for the period on and after October 1, 2014.

Section 413.011, Labor Code and corresponding Division rules require the Commissioner of Workers' Compensation (Commissioner) to adopt the most current reimbursement methodologies, models, and values or weights used by CMS, including applicable payment policies relating to coding, billing, and reporting for use in the workers' compensation system. As a result, health care providers currently include appropriate ICD-9-CM codes on their medical bills to workers' compensation insurance carriers. Accordingly, once CMS requires the use of ICD-10-CM for diagnosis coding and ICD-10-PCS codes for inpatient procedure coding on medical bills for services rendered, health care providers will begin using these codes to bill for medical services.

Insurance carriers are required by Division rules in 28 TAC Chapter 134, Subchapter I to report specific billing and payment data for each medical bill on a workers' compensation claim. Currently, this billing and payment data must include the ICD-9 diagnosis code(s) contained on each medical bill and the ICD-9 procedure codes when appropriate. These proposed amendments modify Division rules in 28 TAC Chapter 134, Subchapter I so that insurance carriers' may report ICD-10 codes in a medical EDI record once health care providers start using these diagnosis and procedure codes on medical bills.

The Division published an informal draft of proposed amendments to §§134.803, 134.804, and 134.807 on the Division's website from April 24, 2012 until May 24, 2012. The Division received ten informal comments on the proposed amendments. The informal draft provided system participants with two options. Option 1 provided draft rule changes to §134.803 and §134.807 that retained the use of the *IAIABC EDI Implementation Guide for Medical Bill Payment Records, Release 1.0, dated July 4, 2002* published by the International Association of Industrial Accident Boards and Commissions (IAIABC), but would require insurance carriers to populate ICD-10-CM and ICD-10-PCS codes in the ICD-9-CM data elements when appropriate and as described in the draft *Texas EDI Difference Table, Version 2.0, April 2012.* Option 2 provided draft rule changes to §§134.803, 134.804 and 134.807 that adopted by reference *IAIABC Workers' Compensation Medical Bill Data Reporting EDI Implementation Guide, Release 2, dated February 1, 2012* (Release 2) and the underlying ASC X12 005010 standard which supports the reporting of ICD-10-CM and ICD-10-PCS codes. Release 2 is only recently available for use and is not utilized by any other jurisdiction to the Division's knowledge. Additionally, adopting Release 2 would entail a much longer implementation period which would not allow the Division and system participants sufficient time to make the necessary programming and database changes to fully implement Release 2 by October 1, 2014. In consideration of these factors, the Division elected to pursue Option 1.

The proposed amendments to §134.803 and §134.807 clarify the reporting standards including state specific requirements used by insurance carriers and their medical EDI trading partners. These proposed amendments will require insurance carriers and their medical EDI trading partners to report the ICD-10-CM codes and the ICD-10-PCS codes as well as report ICD-9-CM codes if those codes are received on a medical bill by a health care provider. These proposed amendments also reflect the Division's decision to retain the IAIABC EDI Implementation Guide, Release 1. Labor Code §413.007 requires the Division to maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or sections. In accordance with Labor Code §413.007, the Division shall also

ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols and can be used in a meaningful way to allow the Division to control medical costs as provided by the Texas Workers' Compensation Act (Act). Labor Code §413.007 further requires the Division to ensure that this data base of medical charges, actual payments, and treatment protocols is available for public access at a reasonable fee. Labor Code §413.008 provides that on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the insurance carrier's possession, custody, or control that reasonably relates to the Division's duties under the Act and to health care treatment, services, fees, and charges. An insurance carrier commits an administrative violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this statute.

Medical EDI data is used by the Division for multiple administrative and regulatory activities, including the development of medical fee guidelines; system monitoring and research activities under Labor Code Chapter 405; the administration of the Division's Performance Based Oversight (PBO) activities under Labor Code Chapter 402; and the administration of medical quality reviews under Labor Code Chapter 413. The accuracy of the data impacts the analyses of these statutorily required activities.

These proposed rules are necessary to implement the legislative directives in Labor Code §413.007 and §413.008 because they assist in maintaining a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner and Division in their regulatory and administrative activities.

In addition to the proposed amendments to implement the reporting of ICD-9 code sets or ICD-10 code sets under 28 TAC Chapter 134, Subchapter I, the Division is also proposing nonsubstantive changes that are designed to provide increased clarity and readability in Division rules. These other proposed amendments are described below.

Description of the Proposed Amendments

Proposed Amended §134.803

The proposed amendments to §134.803(b) adopts the *Texas EDI Medical Difference Table,* Version 2.0, dated October 2012. This new table contains changes to the current adopted difference table which are necessary to delineate the difference in which the Division implemented the IAIABC EDI Implementation Guide with regard to the reporting of diagnosis and procedure codes. Specifically, the proposed table includes the Texas segment/elements that need to be populated with the ICD-9 code or ICD-10 code contained on the medical bill.

The proposed *Texas EDI Medical Difference Table,* Version 2.0 documents how insurance carriers are to report data for data elements HI01-2, HI02-2, HI03-2, HI04-2, and HI05-2 in the HI segment. (See page 4 and 5 of the proposed *Texas EDI Medical Difference Table,* Version 2.0, dated October 2012). These changes are necessary because they will require insurance carriers to submit ICD-9 code sets or ICD-10 code sets in a medical EDI record once health care providers begin submitting these codes on medical bills. Furthermore, the new language clarifies that each of those specified data elements can be populated with the ICD-9 or ICD-10 CM code, or ICD-9 or ICD-10 PCS code, when the appropriate code is contained on the medical bill.

This proposed new table also makes nonsubstantive revisions to the currently adopted difference table for purposes of improved clarity and readability. These revisions include a new column titled "Row Type" which contains a general description of each row. Also, the CAS segment on the table is titled "Claims Adjustment."

The proposed amendments to subsection (c) are necessary to update the Division's email address to read http://www.tdi.texas.gov/wc/indexwc.html.

The proposed amendments to §134.803 delete subsection (e) concerning the September 1, 2011 effective date. If adopted, the effective date for the amended rule will be 20 days after the date it is filed with the Office of the Secretary of State pursuant to Government Code §2001.036.

Proposed Amended §134.807

Section 134.807 concerns state specific requirements. The two changes in proposed amended §134.807 relate to subsections (f) and (g). The change in proposed amended subsection (f) is the addition of (f)(4) which states: *(4) When ICD-10-CM and ICD-10-PCS codes are contained on the medical bill, the insurance carrier must report these codes in the associated ICD-9-CM data elements using the ICD-9-CM code qualifiers.* The instruction is necessary to provide guidance in order that insurance carriers and their trading partners will know how to populate ICD-10-CM and ICD-10-PCS code in the ICD-9 data elements when appropriate. These segment/elements are specified in the proposed *Texas EDI Medical Difference Table,* Version 2.0, dated October 2012 on pages 4 and 5, Loop Identifier 2300, Segment/Element HI. This table is further discussed above under Proposed Amended §134.803.

The proposed amendments to §134.807 delete subsection (g) concerning the September 1, 2011 effective date. If adopted, the effective date of the amended rule will be 20 days after the date it is filed with the Office of the Secretary of State pursuant to Government Code §2001.036.

Teresa Carney, Director, System Monitoring and Oversight, anticipates that for each year of the first five years the proposed amended sections will be in effect, there will be some fiscal implication for state government as a result of implementing the proposed amendments. Ms. Carney anticipates a one-time internal automation cost of implementing the amendments for the Division in the first year. Ms. Carney estimates that this type of project will require expenditure of approximately $26,000. The estimated hours would consist of 480 hours for an experienced Department computer programmer; 160 hours for an experienced Division systems analyst; and 40 hours for an experienced Division Information Management Services (IMS) computer programmer. According to the information available from Department Human Resources staff, an experienced Department computer programmer for this project would be paid an estimated wage of $42 per hour, an experienced Division systems analyst at an estimated wage of $31 per hour and a Division IMS computer programmer at an estimated wage of $34 per hour. The estimated hours multiplied by the estimated wages of an experienced Department computer programmer total $20,160 (480 hours x $42), that of an experienced Division systems analyst $4,960 (160 hours x $31) and that of an experienced Division IMS computer programmer $1,360 (40 hours x $34) for a combined estimated total of $26,480. Ms. Carney anticipates that this project will take approximately three to six months to undertake depending on whether the

staff concerned is able to work on the project on a full-time or part-time basis. Thereafter, in the subsequent second to fifth years these proposed amendments are in effect, any cost to state government will be woven in as part of the budgeted cost of enforcing or administering the rules.

Ms. Carney anticipates that for each year of the first five years the proposed amended sections will be in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the proposed amendments because they will not be enforcing or administering the proposed amendments.

Local and state government entities, when acting in the capacity of an insurance carrier, will be impacted in the same manner as other insurance carriers that are required to comply with the proposed amendments as described later in this preamble.

There will be no measurable effect on local employment or the local economy as a result of this proposal.

Ms. Carney also anticipates that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the continuation of the accuracy of data available for Division administrative and regulatory activities.

Insurance carriers and their trading partners have already incurred the vast majority of costs associated with implementing automated systems capable of reporting medical EDI transactions to comply with the current rules relating to medical state reporting. Therefore Ms. Carney anticipates that the impact of these proposed amendments will be limited. According to Division records, there were approximately 50 trading partners during fiscal year 2012 (September 1, 2011 to August 31, 2012) that submitted medical EDI records to the Division. These trading partners submitted on behalf of over 663 insurance carriers for the same time period. Currently, 45 trading partners are actively submitting medical EDI records to the Division, three of which are insurance carriers.

Ms. Carney estimates that the cost of implementing the amendments for the impacted system participants would be approximately $2,665 for each of the 45 trading partners (including the three insurance carriers currently submitting their own medical EDI records to the Division). The estimated hours for the automation project would consist of 40 hours for an experienced computer programmer; 13 hours for an experienced systems analyst and 4 hours for an experienced computer programmer performing extracting, loading and testing functions similar to the responsibilities of a Division IMS computer programmer. According to the Wage Information Network available from the Labor Market and Career Information of the Texas Workforce Commission, experienced computer programmers receive a wage of $46.37 per hour and experienced systems analysts a wage of $48.11 per hour. The estimated hours multiplied by the wages of both experienced computer programmers would cost $2,040.28 (40 hours x $46.37) plus (4 hours x $46.37) and adding the $625.43 cost of the experienced systems analyst (13 hours x $48.11) provides a combined cost of $2,665.71. Since there are 45 active trading partners, the total cost for all impacted system participants would be $119,956.95 (45 x $2,665.71). Ms. Carney estimates implementation would take approximately three to six months depending on allocation of personnel on a full or part-time basis.

In summary, the cost for 45 trading partners including three insurance carriers would be approximately $2,665 for each of them and approximately $120,000 system wide. Additional costs are not anticipated after implementation and any costs in subsequent fiscal years would be restricted to standard system maintenance and notification processes. Additionally, the Division notes that without the proposed rule changes, insurance carriers would have the burden of translating ICD-10-CM and ICD-10-PCS codes submitted by health care providers to ICD-9-CM codes in order to comply with existing Division Medical EDI requirements. While the Division does not have a precise estimate of how much it would cost trading partners or the system to translate these codes to comply with the existing Medical EDI rules, the Division notes that adopting these proposed rule changes would result in an overall savings since trading partners and insurance carriers will have the ability to simply report the codes that were submitted by the health care provider on the medical bill.

Ms. Carney anticipates there will be no cost to injured employees or health care providers under the proposed amendments.

As required by the Government Code §2006.002(c), the Division has determined that the proposal may have an adverse economic effect on the small and micro-businesses that may be required to comply with the proposed amendments. According to Division records, there are currently 45 trading partners including three insurance carriers that submit medical EDI records to the Division. These trading partners submit on behalf of over 663 insurance carriers. The Division estimates three trading partners and no insurance carriers required to comply with the proposed amendments may qualify as small or micro-businesses for the purposes of Government Code §2006.001. The cost of compliance with the proposal will not vary between large businesses and small or micro-businesses, and the Division's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal is equally applicable to small or micro-businesses. Since the Division has determined that the proposed amendments may have an adverse economic effect on small or micro-businesses, this proposal contains the required economic impact statement and a regulatory flexibility analysis, as detailed under Government Code §2006.002.

Even if the proposed amendments would have an adverse impact on small or micro-businesses, it is neither legal nor feasible to waive the provisions to all affected entities and individuals.

The Division also considered not adopting the proposed amendments, implementing different requirements or standards for the affected small and micro-businesses, and exempting small and micro-businesses from the requirements of the proposed amendments.

Not adopting the proposed amendments. The Division rejected this approach because it would not comply with Labor Code §413.007, which requires the Division to maintain a statewide data base that contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols. The proposed changes clarify the reporting standards and the state specific requirements and synchronize them with the compliance date for ICD-10-CM codes and the ICD-10-PCS codes by the HHS.

Implementing different requirements or standards for the affected small or micro-businesses. The Division rejected this option because implementing different requirements or standards would be too costly for the Division to administer and not in the best interest of the state.

Exempting small and micro-businesses from the requirements of the proposed amendments. The Division rejected this approach because exempting small and micro-businesses from the

requirements of the proposed amendments would result in inaccurate and incomplete data, making the Division unable to meet its statutory obligation to maintain a statewide data base.

Therefore, it is neither legal nor feasible to waive the requirements of the proposed amendments for small or micro-businesses.

The Division has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. CST on December 10, 2012. Comments may be submitted via the internet through the Division's internet website at http://www.tdi.texas.gov/wc/rules/proposedrules/index.html, by email at rulecomments@tdi.state.tx.us or by mailing or delivering your comments to Maria Jimenez, Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-4D, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645.

Any request for a public hearing must be submitted separately to the Texas Department of Insurance, Division of Workers' Compensation, Workers' Compensation Counsel, MS-1, 7551 Metro Center Drive, Austin, Texas 78744-1645 by 5:00 p.m. CST by the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§413.007, 413.008, 413.011, 413.0511, 413.0512, 402.075 and 405.0025 and under the general authority of §§402.00111, 402.00128, and 402.061, and Government Code §2001.0036.

Labor Code §413.007 requires the Division to maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by the Commissioner in adopting medical policies and fee guidelines and the Division in administering the medical policies, fee guidelines, or sections. Labor Code §413.007, also requires that the Division ensure that the data base contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols that can be used in a meaningful way to allow the Division to control medical costs as provided by Texas Workers' Compensation Act.

Labor Code §413.008 provides that on request from the Division for specific information, an insurance carrier shall provide to the Division any information in the insurance carrier's possession, custody, or control that reasonably relates to the Division's duties under the Act and to health care treatment, services, fees, and charges.

Labor Code §413.011 in relevant part, requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by CMS, including applicable coding, billing, and reporting policies, and to adopt rules that remain aligned, to the extent possible, with CMS coding, billing, and reporting policies.

Labor Code §413.0511 and §413.0512 requires the Division's Medical Advisor and Medical Quality Review Panel to monitor the quality of health care and recommend appropriate actions regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations. Medical bill reporting data collected from the statewide data base contain information that assist the Division Medical Advisor and the Medical Quality Review Panel in performing their duties under Labor Code §413.0511 and §413.0512.

Labor Code §402.075 requires the Commissioner of Workers' Compensation to assess, at least biennially, the performance of insurance carriers and health care providers in meeting key regulatory goals

Labor Code §405.0025 requires the Workers' Compensation Research and Evaluation Group to conduct professional studies on the quality and cost of medical benefits and to produce a biennial report on the impact of certified networks.

Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code.

Labor Code §402.00128 lists the general powers of the Commissioner including the power to hold hearings and the authority to assess and enforce penalties as authorized by Title 5, Labor Code.

Labor Code §402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Government Code §2001.036, provides in relevant part, that a rule takes effect 20 days after the date on which it is filed in the Office of the Secretary of State, except that if a later date is specified in the rule, the later date is the effective date.

The following statutes are affected by this proposal: Labor Code §§413.002, 413.007 and 413.008.

§134.803. Reporting Standards.

(a) (No change.)

(b) The commissioner adopts by reference the *Texas EDI Medical Data Element Requirement Table,* Version 1.0, dated June 2011, the *Texas EDI Medical Data Element Edits Table,* Version 1.0, dated June 2011, and the *Texas EDI Medical Difference Table,* Version 2.0, dated October 2012 [~~1.0, dated June 2011~~]. All tables are published by the division.

(c) Information on how to obtain or inspect copies of the IAIABC EDI Implementation Guide and the adopted division tables may be found on the division's website: http://www.tdi.texas.gov/wc/indexwc.html [~~http://www.tdi.state.tx.us/wc/indexwc.html~~].

(d) (No change.)

[~~(e) This section is effective September 1, 2011.~~]

§134.807. State Specific Requirements.

(a) - (e) (No change.)

(f) In addition to the requirements adopted under §134.803 of this title (relating to Reporting Standards), state reporting of medical EDI transactions shall comply with the following formatting requirements:

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

(4) When ICD-10-CM and ICD-10-PCS codes are contained on the medical bill, the insurance carrier must report these codes in the associated ICD-9-CM data elements using the ICD-9-CM code qualifiers.

[~~(g) This section is effective September 1, 2011.~~]

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

Filed with the Office of the Secretary of State on October 29, 2012.

TRD-201205567
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 804-4703

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER L. PROCEDURES FOR PROTESTING COMPTROLLER PROPERTY VALUE STUDY AND AUDIT FINDINGS

34 TAC §§9.4301, 9.4302, 9.4306, 9.4308, 9.4309, 9.4311, 9.4313

The Comptroller of Public Accounts proposes amendments to §§9.4301, 9.4302, 9.4306, 9.4308, 9.4309, 9.4311, and 9.4313, concerning Subchapter L, Procedures for Protesting Comptroller Property Value Study and Audit Findings. These sections are being amended to provide added clarification to and improve efficiency of the protest process.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be by improving the administration of local property valuation and taxation. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the amendments may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Government Code, §403.303(c) which provides for the comptroller to adopt rules governing the conduct of protest hearings.

These amendments implement Government Code, §403.303(c).

§9.4301. Definitions.

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

(1) Agent--A petitioner may designate an agent to act on behalf of the petitioner in protesting comptroller's findings pursuant to this subchapter. Except as provided in paragraph (7) of this section, a petitioner may designate only one agent per protest. The agent is the individual that the petitioner, if acting through an agent, is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's protest;

(C) argue and present evidence at any hearing on petitioner's protest and authorize individuals other than the agent to argue and present evidence at a hearing on petitioner's protest; and

(D) any other action required of petitioner.

(2) ALJ--An Administrative Law Judge employed by the State Office of Administrative Hearings.

(3) Clerical error--A numerical error that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating. In this subchapter, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning. In this subchapter, "clerical error" does not include any claim regarding the conduct of the study generally, such as a claim of a study design defect; only district-specific numerical errors are included in the definition of "clerical error."

~~[(3) Comptroller--The Comptroller of Public Accounts and employees and designees of the Comptroller of Public Accounts.]~~

(4) Division--The comptroller's Property Tax Assistance Division.

(5) Division director--Director of the comptroller's Property Tax Assistance Division. Except as otherwise provided in this subchapter, all petitions and other documents related to a protest shall be filed or served, as applicable, by delivery to the division director.

(6) Eligible property owner--A property owner in a school district whose property is included in the study conducted by the comptroller under Government Code, §403.302 and whose tax liability on such property is $100,000 or more. A property owner is an "eligible property owner" only in a school district in which all of the requirements of this paragraph are met. Property is "included in the study" only if, in conducting the study, the comptroller appraised or otherwise assigned a value other than local value to the property and the value of the property is reflected on the study's confidence interval detail for the school district in which the property was located. Additionally, in the case of a protest of the comptroller's findings under Government Code, §403.302(h), the property must not have been deleted from the study before final findings were certified to the commissioner of education. In the case of a protest of the comptroller's findings under Government Code, §403.302(g), the property owner's property must be included in the study for the year in which the preliminary findings were made that are the subject of the protest. In the case of a protest of the comptroller's findings under Government Code, §403.302(h), the property owner's property must have been included in the study for the year that is the subject of the audit under protest. Property is not "included in the study" in the case of a protest under Government Code, §403.302(g) or (h) by virtue of any calculations made pursuant to Government Code, §403.302(c-1), (d), (d-1), (e), (i) - (k) and a property owner does not have standing to protest such calculations.

(7) Petition--The documents and supporting evidence filed by petitioner in accordance with this subchapter to protest the comptroller's findings under Government Code, §403.302(g) or (h). A petitioner is limited to one petition per audit or property value study, except that a petitioner protesting property value study findings may file a separate petition solely to address self report corrections pursuant to §9.4305(g) of this title (relating to Who May Protest). If a petitioner files one petition to protest property value study findings and a separate petition pursuant to §9.4305(g) of this title, the petitioner may designate different agents for each protest. If a petitioner files one petition to protest both property value study findings and to address self report corrections pursuant to §9.4305(g) of this title, the petitioner may designate only one agent.

(8) Petitioner--A school district or eligible property owner who submits a petition to protest the comptroller's findings under Government Code, §403.302(g) or (h). In addition, an appraisal district may be a petitioner if it is authorized in writing by a school district to file a petition to protest and the school district is not filing a petition to protest. Unless the context clearly indicates otherwise, in this subchapter, the term "petitioner" includes petitioner's agent. When, in this subchapter, information is to be provided to or served on a petitioner, such information, except as otherwise provided in this subchapter, shall be provided to or served on the agent designated by petitioner or, if no agent has been designated, to petitioner's designated employee contact.

(9) SOAH--The State Office of Administrative Hearings. A matter may be referred to SOAH only by the comptroller.

(10) Comptroller--The Comptroller of Public Accounts and employees and designees of the Comptroller of Public Accounts.

§9.4302. General Provisions.

(a) Scope of rules. The rules in this subchapter shall govern the procedure for protesting the comptroller's findings under Government Code, §403.302(g) or (h). The Texas Administrative Procedures Act, the Texas Rules of Procedure, the Texas Rules of Evidence, and the State Office of Administrative Hearings (SOAH) procedural rules do not apply to protests of the comptroller's findings under Government Code, §403.302(g) or (h). Nothing in this subsection shall preclude general application by a SOAH Administrative Law Judge (ALJ) of evidentiary principles addressed in the Texas Rules of Evidence, such as relevance and witness credibility, as an advisory tool in making evidentiary determinations in protests of the comptroller's findings under Government Code, §403.302(g) and (h). [~~The Texas Rules of Evidence apply to protests of the comptroller's findings under Government Code, §403.302(g) and (h) only to the extent specified in this subchapter.~~]

(b) Construction. Unless otherwise provided, this subchapter shall be construed as provided by the Code Construction Act, Government Code, Chapter 311.

(c) Computation of time. In computing a period of time prescribed or allowed by the rules in this subchapter, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or Texas state or federal holiday on which the comptroller's office is closed, the period is extended to include the next day that is not a Saturday, Sunday, or Texas state or federal holiday on which the comptroller's office is closed.

(d) Filing and serving documents. Unless otherwise provided, every document relating to a protest including, but not limited to, a petition shall be delivered to the division director by one of the following methods: hand delivery; United States Postal Service first-class mail in a properly addressed and sufficiently stamped envelope or box; overnight delivery service in a properly addressed and prepaid envelope or box; or email. The address for hand delivery is Director, Property Tax Assistance Division, 1711 San Jacinto, 3rd Floor, Austin, Texas 78701. The address for delivery by United States Postal Service mail and overnight delivery service parcels is: Director, Property Tax Assistance Division, 1711 San Jacinto, 3rd Floor, Austin, Texas 78701. The address for delivery by email is: PTADAppeals@cpa.state.tx.us. Delivery by email will only be accepted if all documents being delivered by email are forwarded in Microsoft Word® or portable document format (pdf) compatible with the latest version of Adobe Acrobat® [~~or Microsoft Word®~~] in a file size that can be accommodated by the division's computer system at the time of delivery. Documents delivered by hand delivery, first-class mail, or overnight delivery service must be paper documents unless another format is approved in writing in advance by the division director. The petitioner is responsible for verifying receipt by the division of all documents delivered regardless of the method of delivery. All documents delivered to the division director, regardless of method of service, must be legible. Except as otherwise expressly provided in this subchapter, the division may deliver written correspondence and other documents to a petitioner by hand delivery, United States Postal Service first-class mail, overnight delivery service, or email. All information contained in documents submitted to the division that is confidential by law must be marked as confidential. Multi-page documents that are confidential in their entirety must be marked as confidential on each page. By filing a protest, the petitioner certifies that all confidential information submitted to the division has been clearly identified as confidential.

(e) Except as otherwise provided in this subchapter, the division director has independent discretion to impose deadlines and schedule hearing dates as reasonable or necessary to timely and efficiently manage the protest process.

§9.4306. Filing a Protest.

(a) A protest shall be asserted by timely filing a petition with the division. A petition protesting the comptroller's preliminary findings under Government Code, §403.302(g) must be filed within 40 calendar days after the date the comptroller certifies preliminary findings of taxable value to the commissioner of education pursuant to Government Code, §403.302(g). A petition seeking a self-report correction pursuant to §9.4305(g) of this title (relating to Who May Protest) must be filed within 40 calendar days after the date the comptroller certifies preliminary findings of taxable value to the commissioner of education pursuant to Government Code, §403.302(g). A petition protesting the comptroller's findings under Government Code, §403.302(h) must be filed within 40 calendar days after the date the comptroller certifies findings of the audit to the commissioner of education pursuant to Government Code, §403.302(h).

(b) A petition must be signed by:

(1) the superintendent of the school district and the school district's designated agent, if it is a petition filed by a school district;

(2) the superintendent of the school district, [~~and~~] the chief appraiser of the appraisal district, and the appraisal district's designated agent, if any, if it is a petition filed by an appraisal district authorized by a school district; or

(3) the property owner and the property owner's agent, if it is a petition filed by a property owner.

(c) All petitions shall be filed with the division director in the form and manner prescribed by the comptroller. A petition may be delivered to the division director by hand delivery, mail, overnight delivery service, or email in accordance with the provisions of §9.4302(d) of this title (relating to General Provisions), but a petition is not filed until it is actually received by the division director. For purposes of this subsection, receipt by the division constitutes receipt by the division director. The petitioner is responsible for verifying receipt by the division of all documents delivered regardless of the method of delivery.

A petitioner shall have the burden to prove that a petition was timely filed.

(d) A petition delivered to the division director by hand delivery or email is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section and meets the requirements set forth in §9.4302(d) of this title.

(e) A petition delivered to the division director by mail is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section or if it is received within ten calendar days of the day it is sent and it is sent by United States Postal Service first-class mail in a properly addressed and sufficiently stamped envelope or box and the envelope or box exhibits a legible postmark affixed by the United States Postal Service or by compliant use of a postage meter licensed by the United States Postal Service showing that the petition was mailed on or before the last day for filing as set forth in subsection (a) of this section.

(f) A petition delivered to the division director by overnight delivery service is timely filed only if it is received on or before the last day for filing as set forth in subsection (a) of this section or if it is received within ten calendar days of the day it is sent and it is sent by overnight delivery service in a properly addressed and prepaid envelope or box and the envelope or box exhibits a legible date showing that the petition was delivered to the overnight delivery service for delivery on or before the last day for filing.

(g) A school district shall deliver a copy of its petition, except supporting documentary evidence, to each appraisal district that appraises property for the district. An appraisal district authorized by a school district to file a protest shall deliver a copy of its petition, except supporting documentary evidence, to the school district that authorized the protest. A property owner shall deliver a copy of its petition, including supporting documentary evidence, to each school district and appraisal district in which the property under protest is located. Every petition shall contain a certification that a copy of the petition was delivered as required by this subsection.

(h) The petition, including supporting documentary evidence, if filed by hand delivery, mail, or overnight delivery service, must be filed in triplicate with the division director and the original and both copies must be in the form required under this subchapter. If filed by email, only the original must be filed; no additional copies are required.

§9.4308. Contents of Petition.

(a) A petition shall show the petitioner's name and address; designate the petitioner's agent; designate the mailing address, delivery address for overnight delivery, e-mail address, and facsimile number for purposes of service and notice under this subchapter; and, state the grounds for objection to the preliminary findings. Petitioner shall [~~state the grounds for objection and~~] provide supporting documentary evidence in the manner required by this section in support of each ground for objection. The petition shall also include the following [~~information~~]:

(1) the petitioner's grounds for objection, stated with the specificity and in the manner required by this subchapter; and

(2) documentary evidence, organized as required by this subchapter, to support each contention asserted in the petition.

(b) To protest the comptroller's findings, a petitioner must identify errors in value determinations made by the division in the conduct of the study and list them numerically and sequentially (1, 2, 3, 4, etc.) as grounds for objection in the petition. Except in the case of self report corrections, to provide the comptroller with sufficient notice of grounds for objection, the petitioner shall identify and numerically list each property by each property category; the petitioner shall list each property within each category by identification number or, in the case of property in Category J, each company identification number or, in the case of property in Category D1, each land class and item of income or expense; and, the petitioner shall, for each property, company, or land class and item of income or expense, as applicable:

(1) identify [~~except in the case of a self-report correction which shall be identified as Category "SR," identify and numerically list each property by each property category; each property identification number or, in the case of property in Category J, each company identification number or, in the case of property in Category D1, each land class and item of income or expense; and,~~] each value determination [~~finding~~] alleged to be inaccurate;

(2) state [~~identify~~], for each change sought by [~~way of~~] the protest, the inaccuracy of the value determination alleged by petitioner to be inaccurate [~~finding~~];

(3) state [~~identify~~], for each change sought by [~~way of~~] the protest, the value determination [~~finding~~] alleged by petitioner to be accurate including, if applicable as set forth in subsection (e) [~~(d)~~] of this section, the value of the change sought;

(4) state [~~identify~~], for each change sought by [~~way of~~] the protest, the basis of the allegation [~~for petitioner's assertion~~] that the comptroller's finding is inaccurate; and

(5) identify by title or description and provide, for each change sought [~~by way~~] of the protest, some documentary evidence that supports each of petitioner's allegations of inaccuracy. Documentary evidence that merely relates to the finding at issue is insufficient. The documentary evidence must actually support, although need not conclusively establish, the petitioner's contention that the comptroller's finding is inaccurate. It [~~If, as to a ground of objection, the division's documents created, collected, and utilized in the conduct of the study or performance of the audit, as applicable, evidence petitioner's allegations of inaccuracy, it~~] is sufficient to identify and include [~~those~~] documents created, collected, and used by the division in conducting the study or performing the audit, as applicable, in support of a [~~the~~] ground of objection so long as the documents support petitioner's allegations of inaccuracy with specificity. In any case, it is not sufficient to merely identify or reference documents; all documentary evidence must be identified and copies must be submitted.

(c) For purposes of this section, a "value determination" is a determination made by the division in the course of arriving at a value for a property, company, or a land class and item of income or expense. A determination may be the inclusion of a sale in the study, the sale's price of a property included in the study, or an element of an appraisal. Examples of elements of an appraisal include construction quality, effective age, percent of depreciation, capitalization rate, market rent, expenses, land value, land value per acre, type of lease, fencing expense, and other components.

(d) [~~(c)~~] The petition is required to identify separately each finding alleged to be inaccurate and each change sought by the protest. Multiple claims regarding the same property, company, or land class and item of income or expense cannot be combined in the same ground for objection. If, for example, it is alleged that the effective age and the land value for a specific property [~~finding~~] are inaccurate, each issue must be identified as a separate ground for objection. Matters such as calculation of local modifiers and[~~,~~] land schedules[~~, and stratification~~] do not constitute comptroller findings, but may be used in arriving at comptroller findings for an individual property. Such matters may be raised in a protest only in support of individual claims of inaccurate findings as to individual properties. An objection that does not constitute a protest of a comptroller finding is prohibited. For example, to object to a land value of any or all properties included in the study or a

land schedule used in the study, each property for which a value change is sought must be separately identified. A protest of an appraiser's land schedule generally and without identifying each property for which a value change is sought does not constitute a protest of a comptroller finding and shall not be permitted.

(e) [~~(d)~~] Each ground for objection included in the petition must state the relief sought with sufficient specificity such that the comptroller or an ALJ can, based solely on a review of the petition, grant the relief requested by making the change requested. Thus, for grounds for objection for which a specific value adjustment is sought, the specific value sought must be stated. For example, the value of personal property for which a sale adjustment is sought must be stated and the price per acre sought for a protested item of productivity value income or expense must be stated. A petitioner is not required to include a specific value for changes that are not value specific. For example, an adjustment to effective age does not require a statement of value because the relief can be granted without reference to the value change resulting from a change in effective age. Thus, the petitioner seeking an adjustment to effective age may state the effective age alleged to be accurate without stating a revised value for the property at issue. If a value-specific adjustment is requested but no specific value is identified, the division may make a value adjustment in response and the value adjustment made will constitute agreement as to the ground for objection.

(f) [~~(e)~~] All documentary evidence submitted by petitioner with the petition shall be filed in the following manner: organized and separated by cover sheets to correspond to each ground for objection, with each cover sheet clearly identifying the ground for objection number, category, and property identification number, company identification number, or land class and item of income or expense, as applicable. If one or more documents are included as evidence for more than one ground for objection, the documents may be marked and identified as an exhibit and provided only once, rather than copied for each applicable ground for objection. Each set of documents must be marked as a separate exhibit (for example, "Exhibit A," "Exhibit B," etc.). However, if documents are required pursuant this subchapter to be submitted in triplicate, all documents are required to be submitted in triplicate, including exhibits.

(g) [~~(f)~~] The following are examples of sufficient identification of grounds for objection in protesting the comptroller's preliminary findings under Government Code, §403.302(g). The examples are general and provided only by way of example. All requirements for submission set forth in this subchapter must be followed.
Figure: 34 TAC §9.4308(g)
[~~Figure: 34 TAC §9.4308(g)~~]

(h) Self report corrections. Self report corrections are limited to changes in the comptroller's preliminary findings under Government Code, §403.302(g) that were caused by an error in a district's annual report of property value, by a change in a district's certified tax roll, or by clerical errors in a district's local value made by the division. All self report corrections must be asserted in sequentially numbered grounds for objection. Grounds for objection must set forth by written requests and be supported by documentation as identified in this subsection.

(1) To seek a self report correction regarding changes of values reflected in the School District Report of Property Value (Form 50-108), a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated School District Report of Property Value, and identify and include with the protest the following documentation: School District Report of Property Value (Form 50-108) or documentation that provides substantially the same information set forth in School District Report of Property Value (Form 50-108) with a recap that includes a breakdown of value by category, a breakdown of exemptions and other value deductions, and a breakdown by land class of agricultural and timber land acreage and value. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(2) To seek a self report correction regarding value lost due to school tax limitations, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled, and identify and include with the protest the documentation listed in subparagraphs (A) and (B) of this paragraph. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(A) Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253) or documentation that provides substantially the same information set forth in Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253) and with a recap, if available, showing the total appraised value of residential homesteads subject to a tax ceiling, the total dollar amount of mandatory exemptions on residence homesteads subject to a tax ceiling, the total dollar amount of local optional exemptions on residence homesteads subject to a tax ceiling, the total taxable value of residence homesteads subject to a tax ceiling, and the total actual levy on residence homesteads subject to a tax ceiling; and

(B) a listing by account number in Excel®-compatible format of tax ceilings created in 2006 or a prior year and that still existed in the property value study (PVS) year, if a change or correction to such information is requested, including the year ceiling was established, the ceiling in 2007, and the ceiling in the PVS year, if the total loss of all such combined accounts is different than that reported in the division's preliminary findings. If the total loss of all such combined accounts is not different than that reported in the division's preliminary findings, the listing identified in this subsection need not be submitted. This information is only required if a change or correction to such information is requested.

(3) To seek a self report correction concerning value limitations provided by Tax Code, Chapter 313, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of Value Limitations Under Tax Code, Chapter 313, and identify and include with the protest the following documentation: Report on Value Lost Because of Value Limitations Under Tax Code, Chapter 313 (Form 50-767) with a listing by account number of the market value, exemptions, and taxable value of the property subject to the value limitation. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(4) To seek a self report correction concerning value lost due to participation in tax increment financing, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated Report on Value Lost Because of School District Participation in Tax Increment Financing, and include with the protest the following documentation: Report on Value Lost Because of School District Participation in Tax Increment Financing (Form 50-755) with a listing of each property in the TIF zone identified by account number and showing the appraised and taxable value for the PVS year and appraised and taxable value for the zone's base year. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(5) To seek a self report correction concerning a change or correction in deferred taxes pursuant to Tax Code, §33.06 or §33.065, if not otherwise included in a self report correction under paragraph (1) of this subsection, a petitioner must identify "SR" as the category identification, include a written request that the preliminary findings be revised in accordance with an updated listing of deferred taxes, and include with the protest a listing by account of the unpaid deferred taxes that does not include penalties or interest. All values reflected on the documentation that differ from the division's preliminary findings will be considered to be changes sought by way of the protest.

(6) Notwithstanding paragraphs (1), (2), (3), (4), and (5) of this subsection, a petitioner may seek a self report correction by identifying "SR" as the category identification, including a written request identifying findings sought to be revised, and identifying and including with the protest information necessary to support the requested corrections.

(7) The following are examples of sufficient identification of self report correction grounds for objection in protesting the comptroller's preliminary findings under Government Code, §403.302(g). The examples are general and provided only by way of example. All requirements for submission set forth in this subchapter must be followed.

Figure: 34 TAC §9.4308(h)(7)

(i) [~~(g)~~] The petition must contain a statement by the school district's, property owner's, or authorized appraisal district's agent or, if no agent has been designated, by the school district superintendent, the property owner, or[~~, as applicable,~~] the chief appraiser for the authorized appraisal district, as applicable, that, to the best of the person's knowledge, the statements contained in the petition and the evidence attached to the petition are true and correct.

§9.4309. Insufficient Grounds for Objection.

(a) Any petition or ground for objection that does not comply with §9.4308 of this title (relating to Contents of Petition) does not adequately specify the grounds for objection as required by Government Code, §403.303(a) and may be rejected by the division director without further review by the division.

(b) If the division director determines that a petition or ground for objection asserted in a petition does not comply with §9.4308 of this title, the division will notify the petitioner that the petition or ground for objection has been rejected pursuant to this section. No additional information or evidence may be submitted by a petitioner after a determination of rejection has been made by the division director. Grounds for objection, if any, that have not been rejected will be processed as otherwise set forth in this subchapter. The division's agreement as to requested relief sought by way of a ground for objection is deemed final resolution of that ground for objection. Consequently, if all grounds for objection in a petition other than those that have been rejected have been deemed finally resolved by agreement, the petitioner may request referral of rejected issues in accordance with the provisions of subsection (c) of this section applicable to a petition rejected in its entirety.

(c) If a petition is rejected in its entirety as set forth in this section, the petitioner may request referral of the rejection to State Office of Administrative Hearings (SOAH) within seven calendar days of the date that the division sends petitioner notice of the rejection. Upon timely written request to the division, a copy of the petition will be referred to SOAH with notice that the petition has been rejected pursuant to this subchapter and a request to docket. Following receipt of the referral, SOAH shall assign the case a docket number and assign an Administrative Law Judge (ALJ). The petitioner shall not be permitted to submit any additional information or evidence for consideration by the ALJ. No oral hearing will be held. The ALJ shall consider the petition and make a determination as to each ground for objection included in the petition as to whether or not such ground for objection complies with §9.4308 of this title. If the ALJ determines that a ground for objection does not comply with §9.4308 of this title, the ALJ shall, within ten business days after referral, issue a proposal for decision to the deputy comptroller that the ground for objection be rejected. If the ALJ determines that a ground for objection does comply with §9.4308 of this title, the ALJ shall, within ten business days after referral, issue a proposal for decision to the deputy comptroller stating the ALJ's recommendation as to the decision on such ground for objection. The decision must specify the specific change to the study findings the ALJ recommends and the change must be based solely on the ground for objection set forth in the petition. A ground for objection that does not comply with §9.4308 of this title will not provide the ALJ with sufficient information to identify a specific change to the study findings. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision. After receiving the ALJ's proposal for decision and the record, the deputy comptroller shall issue a final decision.

(d) An ALJ's proposal for decision issued pursuant to subsection (c) of this section shall include the ALJ's recommendations for final decision and the rationale supporting such recommendations.

(e) The ALJ shall serve a proposal for decision issued pursuant to subsection (c) of this section on the deputy comptroller, the petitioner, and the division director by facsimile, electronic mail, hand delivery, or overnight mail delivery service. An ALJ will forward a copy of the record to the deputy comptroller with any proposal for decision.

(f) A party to the protest that is adversely affected by a proposal for decision issued pursuant to subsection (c) of this section may, within seven calendar days after the date the proposed decision is sent by facsimile, electronic mail, hand delivery or is delivered to an overnight delivery service, file with the deputy comptroller exceptions to the proposal for decision. Exceptions filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery, or email. If exceptions are filed, all other parties may, within seven calendar days after the date the exceptions are filed, file replies to the exceptions. Replies filed pursuant to this subsection shall be filed with the comptroller's Special Counsel for Tax Hearings by facsimile or hand delivery and shall on the same date be served on all other parties to the protest by facsimile, hand delivery or email.

(g) The deputy comptroller shall issue a final order on a proposal for decision issued pursuant to subsection (c) of this section and, in doing so, may adopt, amend, or reject the ALJ's proposal for decision. A decision is final on the date signed by the deputy comptroller. The deputy comptroller shall deliver written notice of the final decision to each party to the protest.

(h) If one or more, but not all, of the grounds for objection included in a petition are rejected as set forth in this section, the grounds for objection that have not been rejected will be processed as set forth in this subchapter. After the parties have completed the prehearing stages of review, recommendation, submission of evidence, and informal conference on the grounds for objection that have not been rejected and the petitioner has the opportunity to request referral to SOAH, petitioner may, at the same time and in the same manner as grounds for objection that have not been rejected, request referral to SOAH of rejected grounds for objection. The request for referral to SOAH of rejected grounds for objection must be included in petitioner's request for referral to SOAH of grounds for objection that were not rejected. As to grounds for objection that have been rejected, the provisions of subsections (c) - (g) of this section will control. As to grounds for objection

that have not been rejected, the remaining provisions of this subchapter will control.

§9.4311. Prehearing Exchange and Informal Conference.

(a) After reviewing a petition, the division will send petitioner responses to the petitioner's relief requested in its grounds for objection. The division's responses may include rejection as set forth in this subchapter, agreement, disagreement, or modification. No response to a rejection shall be permitted. An agreement as to a ground for objection is deemed final resolution as to the ground for objection to which the division granted the requested relief.

(b) Petitioner will be given a reasonable period of time, but no less than 15 calendar days to accept the division's recommendations and waive any further consideration of the petition or to reply to the division's responses of disagreement and modification. A petitioner that does not accept the division's recommendations and waive further consideration of the petition shall reply advising the division, as to each ground for objection to which the division has responded with disagreement or modification, as to petitioner's agreement or disagreement. For each ground for objection as to which petitioner does not agree with the division's recommendation, petitioner must file with the division director all supplemental evidence supporting the ground for objection and provide the identity and resumé or summary of qualifications of each witness, other than the chief appraiser or other employees of the appraisal district that appraises property for a [~~the~~] protesting school district, who may testify at any hearing on the ground for objection. Such testifying witnesses shall be identified in a list, identifying for each on which grounds for objection the witness may testify, and a current resumé, curriculum vitae, or summary of qualifications and identification of relevant certifications and licenses shall be provided for each witness. No witness identification is required for the chief appraiser or other employees of the appraisal district that appraises property for a [~~the~~] protesting school district (including a school district made the subject of a protest filed by an authorized appraisal district as provided in this subchapter). The method of delivery, timeliness of filing, and number of copies required of the supplemental supporting evidence and witness disclosure shall be governed in accordance with the provisions of §9.4306 of this title (relating to Filing a Protest). All documentary evidence shall be filed in the following manner: organized and separated by cover sheets to correspond to each ground for objection, with each cover sheet clearly identifying the ground for objection number, category, and property identification number, company identification number, or land class and item of income or expense, as applicable. If one or more documents are included as evidence for more than one ground for objection, the documents may be marked and identified as an exhibit and provided only once, rather than copied for each applicable ground for objection. Each set of documents must be marked as a separate exhibit (for example, "Exhibit A," "Exhibit B," etc.). However, if documents are required under this subchapter to be submitted in triplicate, all documents are required to be submitted in triplicate, including exhibits. A petitioner's failure to timely respond as provided in this subsection constitutes final resolution of the petitioner's protest. A petitioner's failure to indicate, in an otherwise timely-filed response, agreement or disagreement in response to the division's response of disagreement or modification as to any ground for objection will constitute agreement as to the ground for objection and, thus, be deemed final resolution as to the ground for objection. All documents required pursuant to this subsection must be filed with petitioner's reply. Thus, all information required pursuant to this subsection must be filed together in one submission, even if petitioner's deadline to reply has not yet passed.

(c) Within 15 calendar days after receipt of petitioner's reply and evidence, if any, the division shall deliver to petitioner a copy of the documents created, collected, and utilized in conducting the study or performing the audit, as applicable, that the division plans to introduce as evidence relating to the grounds for objection and all rebuttal evidence regarding each ground for objection to which petitioner did not agree and provide the identity and resumé or summary of qualifications of each witness, other than comptroller employees, who may testify at any hearing on the ground for objection. Such testifying witnesses shall be identified in a list, identifying for each on which grounds for objection the witness may testify, and a current resumé, curriculum vitae, or summary of qualifications and identification of relevant certifications and licenses shall be provided for each witness. No witness identification is required for comptroller employees. All documentary evidence shall be filed in the following manner: organized and separated by cover sheets to correspond to each ground for objection, with each cover sheet clearly identifying the ground for objection number, category, and property identification number, company identification number, or land class and item of income or expense, as applicable. If one or more documents are included as evidence for more than one ground for objection, the documents may be marked and identified as an exhibit and provided only once, rather than copied for each applicable ground for objection.

(d) At or after the time that the division delivers its evidence to petitioner pursuant to subsection (c) of this section, the division will provide the petitioner with revised recommendations, if any, and notice of the date, time, and place of the informal conference to be held for consideration of petitioner's remaining grounds for objection, if any. A petitioner may accept the division's recommendations of disagreement or modification made to that point and waive further consideration of the petition or appear at the informal conference. Participation in the informal conference is a jurisdictional prerequisite to referral of grounds for objection to the State Office of Administrative Hearings (SOAH) for hearing. Failure to appear at the scheduled informal conference will be deemed acceptance by the petitioner of the division's recommendations and waiver by the petitioner of further consideration of petitioner's protest. Notice under this subsection will be made by one of the following methods: U.S. first class mail, facsimile transmission, or e-mail.

(e) If the division has identified any failure of petitioner to properly comply with the requirements of labeling and organizing evidence, at the time of the informal conference the petitioner will be notified of such failure and given the opportunity to correct such failure through identification of evidence that was intended to correspond to grounds for objection that remain subject to referral to SOAH. This subsection does not apply to grounds for objection that have been rejected, grounds for objection that have been deemed resolved by agreement of the division, or grounds for objection that have been resolved by agreement of the petitioner. This subsection does not permit a petitioner to submit any additional information, documentation, or evidence. If a petitioner, in correcting a failure to properly comply with the requirements of labeling and organizing evidence, reorganizes the evidence in such a manner as to include evidence under a ground of objection other than the ground of objection understood by the division to be the ground of objection to which the evidence related when originally submitted and the matter is referred to SOAH, the division may submit additional rebuttal evidence, if necessary, upon referral to SOAH.

(f) If a petitioner and the division are unable to resolve all of the remaining grounds for objection timely raised in a petitioner's protest through the informal settlement conference, the petitioner may request a hearing before a SOAH Administrative Law Judge (ALJ).

(g) A petitioner's request for a hearing before a SOAH ALJ shall be made by filing a written request with the division director no later than seven calendar days after the informal conference and must specifically identify all grounds for objection for which referral is re-

quested and identify the individual(s) who will present argument and introduce evidence for petitioner at SOAH if a referral to SOAH is made.

§9.4313. Conduct of Oral Hearing.

(a) Except as otherwise provided in this subchapter, the Administrative Law Judge (ALJ) shall convene a hearing for a protest.

(b) All oral hearings under this subchapter shall be recorded. A petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee. A petitioner may at any time make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter, provided the comptroller timely receives a copy of the transcript at petitioner's expense.

(c) Oral hearings are generally open to the public and shall be held in Austin. However, the ALJ shall close a hearing, on the ALJ's own motion or on the motion of any party or if directed by the comptroller, if confidential information may be disclosed during the hearing.

(d) Hearings shall be conducted in accordance with this subchapter. The Texas Administrative Procedures Act, the Texas Rules of Procedure, the Texas Rules of Evidence, and the State Office of Administrative Hearings (SOAH) procedural rules do not apply. Nothing in this subsection shall preclude general application by a SOAH ALJ of evidentiary principles addressed in the Texas Rules of Evidence, such as relevance and witness credibility, as an advisory tool in making evidentiary determinations in protests of the comptroller's findings under Government Code, §403.302(g) and (h). [~~The Texas Rules of Evidence apply only to the extent specified in this subchapter.~~]

(e) Except as otherwise provided by this subchapter, the comptroller shall present its evidence and argument prior to each petitioner. After each petitioner has presented its evidence and argument, the comptroller shall be given the opportunity to present rebuttal evidence and argument. With that limitation, the ALJ shall establish the order of proceeding and is responsible for closing the record.

(f) No party may offer documentary evidence at the hearing that was not filed and served in accordance with the requirements of this subchapter except upon a showing of good cause for the failure to comply. Upon a party's request supported by a showing of good cause, the ALJ may admit such evidence. No evidence may be submitted to SOAH on any ground of protest other than the grounds for objection identified and submitted by the comptroller.

(g) Testimony of witnesses shall be confined to documentary evidence that has been timely submitted pursuant to the terms of this subchapter. The testimony of a witness may provide, subject to proper objections, background regarding, governing law or standards relating to, or explanation of the documentary evidence, but shall not introduce facts that are not reflected in the documentary evidence.

(h) The following individuals are deemed qualified to testify in a hearing before SOAH conducted pursuant to this subchapter: comptroller employees, chief appraisers, and individuals registered as Class IV Appraisers with the Texas Department of Licensing and Regulation. Any asserted challenge to such individuals may be considered by the ALJ in considering the weight and credibility of testimony, but shall not be grounds for exclusion. All other individuals are subject to challenge and exclusion [~~in accordance with the Texas Rules of Evidence and applicable case law~~].

(i) Argument shall be confined to the evidence and to arguments of other parties.

(j) Admissions, proposals, offers, or agreements made or reached in the compromise of disputed issues prior to referral to SOAH may not be admitted in a hearing. Admissions, proposals, offers, or agreements made or reached in the compromise of disputed issues regarding other protests or prior study years may not be admitted in a hearing.

(k) Unless permitted by the ALJ, no more than two representatives for each party or aligned group of parties shall present argument and introduce evidence at a hearing.

(l) Except as otherwise provided in this subchapter, the ALJ shall establish the order of proceeding and is responsible for closing the record.

(m) An attorney who appears at a protest hearing to argue and present evidence on behalf of a petitioner shall not testify at the hearing.

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

Filed with the Office of the Secretary of State on October 29, 2012.

TRD-201205566
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 14. SCHOOL BUS SAFETY STANDARDS

SUBCHAPTER D. SCHOOL BUS SAFETY STANDARDS

37 TAC §14.52

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 37 TAC §14.52 is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 9, 2012, issue of the Texas Register.)

The Texas Department of Public Safety (the department) proposes an amendment to §14.52, concerning Texas School Bus Specifications. The proposed amendment updates the rule to reflect the 2013 Texas School Bus Specifications as the current publication.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply

with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

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

Comments on this proposal may be submitted to Rebecca Rocha, School Bus Transportation Program, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0525, (512) 424-7395. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §34.002, which authorizes the department to adopt safety standards for school buses; Texas Transportation Code, §547.102, which authorizes the department to adopt standards and specifications for school bus equipment; and Texas Transportation Code, §547.7015, which authorizes the department to adopt rules governing the design, color, lighting, and other equipment, construction, and operation of a school bus for the transportation of schoolchildren.

Texas Government Code, §411.004(3); Texas Education Code, §34.002; and Texas Transportation Code, §547.102 and §547.7015, are affected by this proposal.

§14.52. Texas School Bus Specifications.

(a) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all school buses offered for sale to or use by the public school systems in Texas meet or exceed all standards, specifications, and requirements as specified in the department's publication Texas School Bus Specifications. The department hereby adopts the Texas School Bus Specifications for 2013 [~~2011~~] Model School Buses. Previously published Texas School Bus Specifications remain in effect for earlier model year school buses until the department repeals these publications.

Figure: 37 TAC §14.52(a)

[~~Figure: 37 TAC §14.52(a)~~]

(b) All school bus chassis and body manufacturers shall certify to the department, in the form of a letter, that all multifunction school activity buses offered for sale to or use by the public school systems in Texas meet or exceed all federal standards, specifications, and requirements of a multifunction school activity bus as specified in the Title 49, Code of Federal Regulations, Part 571.

(1) A multifunction school activity bus may be painted any color except National School Bus Glossy Yellow.

(2) A multifunction school activity bus cannot be used for home to school or school to home transportation. Before delivery of a multifunction school activity bus, the manufacturer must place a label in the direct line of site of the driver while seated in the driver's seat stating: "This vehicle is not to be used for home to school or school to home transportation."

(c) Any new school bus found out of compliance with the specifications that were in effect in Texas on the date the vehicle was manufactured will be placed out of service by the vehicle's owner until it is brought into compliance with the applicable specifications.

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

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TRD-201205530
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

The Texas Department of Public Safety (the department) proposes the repeal of §§28.181 - 28.185 and 28.191, concerning DNA, CODIS, Forensic Analysis, and Crime Laboratories. The repeal of these sections is filed simultaneously with proposed new §§28.181 - 28.183, 28.191 - 28.194, and 28.201 which are necessitated by amendments made to Code of Criminal Procedure, Article 38.43 by 82nd Legislature, 2011, SB 1616.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be to better preserve biological evidence, thus aiding investigators and the courts in determining who has committed crimes in which biological evidence is present, including sexual assaults and homicides.

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

the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

SUBCHAPTER K. PRESERVATION OF BIOLOGICAL EVIDENCE

37 TAC §§28.181 - 28.185

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

These repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.053(b), which states the department shall adopt rules relating to the delivery, cataloging, and preservation of evidence stored under this section; Texas Code of Criminal Procedure, Article 38.43(g), which requires the department to adopt standards and rules, consistent with best practices, relating to a person described by Subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence; and Article 38.43(f), which provides that the department shall adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to the department for storage in accordance with §411.053, Government Code, and department rules.

Texas Government Code, §411.004(3) and §411.053(b); and Texas Code of Criminal Procedure, Article 38.43(f) and (g) are affected by this proposal.

§28.181. Applicability.

§28.182. Preservation of Evidence.

§28.183. Cataloging.

§28.184. Delivery.

§28.185. Disposition of Evidence.

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

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205531
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER L. MISCELLANEOUS

37 TAC §28.191

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

This repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§28.191. Sexual Assault Evidence in Cases Without Law Enforcement Reporting.

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

Filed with the Office of the Secretary of State on October 25, 2012.

TRD-201205539
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER K. COLLECTION, STORAGE, PRESERVATION, AND RETRIEVAL OF BIOLOGICAL EVIDENCE

37 TAC §§28.181 - 28.183

The Texas Department of Public Safety (the department) proposes new §§28.181 - 28.183, concerning Collection, Storage, Preservation, and Retrieval of Biological Evidence. These rules are required by 82nd Legislature, 2011, SB 1616 which amended Texas Code of Criminal Procedure, Article 38.43. Article 38.43(g), requires the department to adopt standards and rules, consistent with best practices, relating to a person described by subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect, the fiscal implication for state and local government or local economies will be substantial for some law enforcement agencies which will need to acquire climate controlled storage facilities for biological evidence. Particularly law enforcement agencies in counties with a population over 100,000 will need to have climate controlled long term storage for biological evidence in criminal cases.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply

with these rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be to better preserve biological evidence, thus aiding investigators and the courts in determining who has committed crimes in which biological evidence is present, including sexual assaults and homicides.

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

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

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Code of Criminal Procedure, Article 38.43(g), which requires the department to adopt standards and rules, consistent with best practices, relating to a person described by Subsection (b), that specify the manner of collection, storage, preservation, and retrieval of biological evidence.

Texas Government Code, §411.004(3); and Texas Code of Criminal Procedure, Article 38.43(g) are affected by this proposal.

§28.181. Applicability and Standards.

This subchapter applies to the collection, storage, preservation and retrieval of biological evidence as defined and specified in Code of Criminal Procedure, Article 38.43. Pursuant to this article, the department has adopted standards, consistent with best practices, which are located at the Crime Laboratory Service's homepage on the department's website at www.dps.texas.gov.

§28.182. Collection and Preservation.

(a) Biological evidence and materials should be collected, handled, and preserved in a manner that prevents contamination and degradation and ensures integrity during all phases of the investigation, pretrial, and post adjudication, including:

(1) Packaging each item of biological evidence separately to prevent contamination;

(2) Labeling, marking for identification, and sealing each package of evidence to preserve its chain-of-custody and to prevent cross contamination, loss, or deleterious change; and

(3) Storing the evidence in climate controlled conditions in a facility, which provides security and limited access.

(b) During the trial phase, due diligence shall be exercised to protect biological evidence from cross contamination, loss, and deleterious change. If a courthouse has climate controlled facilities, those facilities should be used.

§28.183. Retrieval and Retention.

(a) The retention and preservation schedule for biological evidence may be accessed in Code of Criminal Procedure, Article 38.43(c).

(b) Long-term evidence retention should be part of the governmental evidence-retention entity's evidence control policy.

(c) A governmental evidence-retention entity must have a system to catalog evidence so it is possible to locate any retained biological evidence.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER L. CATALOGING, DELIVERY, AND DISPOSITION OF BIOLOGICAL EVIDENCE--COUNTY WITH POPULATION LESS THAN 100,000

37 TAC §§28.191 - 28.194

The Texas Department of Public Safety (the department) proposes new §§28.191 - 28.194, concerning Cataloging, Delivery, and Disposition of Biological Evidence--County with Population Less than 100,000. The department proposes adding Subchapter L, including §§28.191 - 28.194, concerning the cataloging, delivery to the department, and disposition of biological evidence applicable to counties with a population of less than 100,000. These rules are proposed pursuant to Government Code, §411.053(b) and 82nd Legislature, 2011, SB 1616, which amended Code of Criminal Procedure, Article 38.43. Article 38.43(f) provides that the department shall adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to the department for storage in accordance with Government Code, §411.053, and department rules.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be to better preserve biological evidence, thus aiding investigators and the courts in determining who has committed crimes in which biological evidence is present, including sexual assaults and homicides.

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

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

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.053(b), which states the department shall adopt rules relating to the delivery, cataloging, and preservation of evidence stored under this section; Texas Code of Criminal Procedure, Article 38.43(f), which provides that the department shall adopt standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to the department for storage in accordance with §411.053, Government Code, and department rules.

Texas Government Code, §411.004(3) and §411.053(b); and Texas Code of Criminal Procedure, Article 38.43(f) are affected by this proposal.

§28.191. Applicability.

This subchapter applies to the cataloging, delivery to the department, and disposition of biological evidence for counties with a population less than 100,000 as specified in Code of Criminal Procedure, Article 38.43.

§28.192. Cataloging.

(a) The following information must accompany all evidence:

(1) full name of convicted person, when applicable;

(2) date of offense;

(3) county of offense;

(4) offense;

(5) sentence that convicted person received, when applicable;

(6) name of victim of offense;

(7) name of investigating agency with agency case/incident number; and

(8) inventory listing the items of biological evidence.

(b) The department will maintain a catalog of information on all evidence received. It will include the information in subsection (a) of this section.

§28.193. Delivery.

(a) The items of biological evidence must be packaged in a manner to avoid contamination.

(b) Each item shall be in a separate paper package completely sealed.

(c) Each package shall be labeled for identification.

(d) Multiple packages related to a single offense may be placed into one outer container (box).

(e) The sealed and labeled box may be delivered to the department warehouse site in person, by U.S. Postal Service, or by private carrier. The Department of Public Safety Crime Laboratory warehouse address will be posted on the department's website at www.dps.texas.gov.

(f) The items must include a packing slip containing the cataloging information as specified in §28.192(a) of this title (relating to Cataloging).

§28.194. Disposition of Evidence.

(a) The submitting agency, prosecutor's office, or clerk's office shall notify the department at the warehouse address posted on the department's website within 30 days of the date the inmate either completes his/her sentence, is released on parole or mandatory supervision, or dies.

(b) Upon receiving such notification, the department shall return the evidence to the submitting agency, prosecutor's office, or clerk's office.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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SUBCHAPTER M. MISCELLANEOUS

37 TAC §28.201

The Texas Department of Public Safety (the department) proposes new §28.201, concerning Sexual Assault Evidence in Cases Without Law Enforcement Reporting. New §28.201 was previously §28.191. The only change to the text is an update to the department's website.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period this rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. There is no anticipated economic cost to individuals who are required to comply with this rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be current and updated rules.

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

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

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143, (512) 424-2143. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This new rule is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§28.201. Sexual Assault Evidence in Cases Without Law Enforcement Reporting.

Pursuant to Code of Criminal Procedure, Article 56.065, instructions and forms regarding the submission, transfer, and preservation of evidence and allowable reimbursement are located at the Crime Laboratory Service's homepage on the department's website at www.dps.texas.gov.

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

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205534
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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CHAPTER 36. METALS REGISTRATION

37 TAC §§36.1 - 36.7, 36.9 - 36.24

The Texas Department of Public Safety (the department) proposes amendments to §§36.1 - 36.7, 36.9 - 36.14, 36.17, and 36.18 and proposes new §§36.15, 36.16, and 36.19 - 36.24, concerning Metals Registration. This proposal is filed simultaneously with the proposed repeal of current §§36.15, 36.16, and 36.19 - 36.21. Many of the proposed revisions are necessitated by amendments to Texas Occupations Code, Chapter 1956 (the Act) as a result of 82nd Legislature, 2011, SB 694. Other revisions are required to facilitate the department's move toward online and electronic application submission and data collection. These proposals are necessary to reorganize existing language, improve clarity, and to establish consistency when possible with other programs within the department's Regulatory Services Division. Each rule has also been amended to eliminate references to paper forms and to establish the requirement of online submissions.

Specifically, §36.1 is amended to strike the reference to "dealer of crafted precious metals" within the definition of applicant, in accordance with the statutory change to the registration of such entities effected through Senate Bill 694.

Section 36.9 is amended to clarify the requirements for the renewal of registrations.

Section 36.12 is amended to modify the criteria for which the department will revoke a certificate of registration to include the submission of a dishonored or invalid payment.

Section 36.19 is repealed, as dealers of crafted precious metals are no longer regulated by the department pursuant to Senate Bill 694, and the original language from former §36.20, concerning Fees, is transferred to new §36.19. Language in new §36.19 is changed to reflect that application fees are non-refundable and to clarify the procedure for online payment of fees.

New §36.20 is proposed pursuant to the requirements of Senate Bill 694, relating to the documentation required of those who would sell burned insulation wire.

New §§36.21, 36.22, and 36.23 are based on the requirements of Occupations Code Chapter 55, relating to accommodations for applicants and spouses of applicants who are members of the military.

New §36.24 clarifies the scope of the registration as being limited to a single physical location.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the amendments and new sections as proposed. There is no anticipated economic cost to individuals who are required to comply with the amendments and new sections as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be a reduction in metal theft and related crimes and improved efficiency in the administration of the statute through greater use of online portals and electronic data transmission and storage.

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

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

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments and new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work; Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act; and Texas Occupations Code, §1956.032(a)(5) and (h), which require that the commission adopt rules establishing the type of documentation required of those who seek to sell burned insulation wire.

Texas Government Code, §411.004(3), and Texas Occupations Code, §§1956.013, 1956.014, and 1956.032(a)(5) and (h), are affected by this proposal.

§36.1. Definitions.

(a) - (k) (No change.)

(l) Statutory agent--The natural person [~~or entity~~] to whom any legal notice may be delivered for [~~at~~] each location.

(m) (No change.)

§36.2. Address on File.

(a) All registrants or applicants [~~shall~~] at all times shall maintain on file with the department their current mailing and principal place of business address. The principal place of business address must be a physical address and may not be a post office box.

(b) All registrants or applicants [~~shall~~] at all times shall maintain on file with the department a current and valid electronic mail address.

(c) All registrants shall notify the department of any change of their mailing or electronic mail address using [~~by completing the Change of Address Form (MRB 7) on~~] the department's online application [~~program's website~~] prior to the effective date of the change of address.

§36.3. Notice.

(a) (No change.)

(b) Service upon the registrant or applicant of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and the department receives confirmation of the transmission. If received after 5:00 p.m. or on a weekend or holiday, it is considered received on the next business day. Receipt is presumed[~~, and~~] three days following the date sent, if by regular United States mail.

(c) (No change.)

§36.4. Application for Certificate of Registration.

[~~(a) No metal recycling entity may operate until they have received a certificate of registration certifying a completed application and payment of fees. Any metal recycling entity that had an active free registration may continue to operate until that registration expires or for 60 days, whichever is earlier, before obtaining a certificate of registration which requires the payment of fees. A person who is required to register and who is not registered may apply for registration at any time.~~]

(a) [~~(b)~~] A certificate of registration [~~as required by subsection (a) of this section~~] may only be obtained by submitting an online application [~~Application for Certificate of Registration (MRB 1)~~] to the department [~~using online forms provided by the department via the program's website at https://records.txdps.state.tx.us/DPS_WEB/MetalsNew/index.aspx~~].

(b) [~~(c)~~] The application must include [~~MRB 1 includes~~], but is not limited to, the following:

(1) Criminal history disclosure of all convictions and deferred adjudications for [~~each person providing a signature for the application,~~] each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application[~~, and each person designated as an on-site representative on the application~~].

(2) Proof of ownership [~~entity form~~] and current status as required by the department. Such proof includes, but is not limited to a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts.

(3) All fees required pursuant to §36.19 [~~§36.21~~] of this title (relating to Fees).

(c) [~~(d)~~] Applicants conducting business at more than one location must complete an application [~~MRB 1~~] for each location at which the applicant proposes to conduct business and obtain a certificate of registration for each location at which the applicant proposes to conduct business.

[~~(e) An applicant for a certificate of registration may not, within two years prior to the date of the application, have previously:~~]

[~~(1) had a certificate of registration revoked;~~]

[~~(2) obtained a certificate of registration by means of fraud, misrepresentation, or concealment of material fact;~~]

[~~(3) sold, bartered, or offered to sell or barter a certificate of registration; or~~]

[~~(4) violated §1956.040(b) of the Act.~~]

(d) [~~(f)~~] An applicant must submit a disclosure pursuant to [~~Statutory Agent Disclosure as described in~~] §36.5 of this title (relating to Statutory Agent Disclosure) along with the application [~~MRB 1~~].

(e) [~~(g)~~] The failure of an applicant to meet any of the conditions of subsections (a) - (d) [~~(f)~~] of this section will be grounds for denial of the application pursuant to [~~under~~] §1956.151 of the Act.

§36.5. Statutory Agent Disclosure.

(a) Statutory agent disclosure information [~~The Statutory Agent Disclosure (MRB 2) form~~] must be completed by all applicants for each location at which the applicant is seeking to conduct business. The statutory agent is the person to whom any legal notice may be delivered for [~~at~~] each location. Each person [~~or entity~~] applying for a certificate of registration must designate a natural person as the statutory agent and provide a physical address where that natural person may be located. This address may not be a post office box.

(b) Updated disclosure information [~~A new MRB 2~~] must be submitted using the department's online application [~~filed~~] whenever the statutory agent changes and pays all fees required pursuant to §36.19 of this title (relating to Fees).

[~~(c) A $10 fee for filing will be charged for filing a form MRB 2 alone, without an initial application or application for renewal.~~]

§36.6. Change in Ownership.

(a) A registrant must notify the department each time the ownership structure or status of a registrant changes using the department's online application and pay all fees required pursuant to §36.19 of this title (relating to Fees). Both notification and payment must be made within five business days of the effective date of the change [~~by completing a Change in Ownership (MRB 3) form as soon as such a change has taken effect~~].

(b) The registrant must submit amended proof of ownership [~~entity form~~] and status as required by the department.

[~~(c) A $10 fee for filing will be charged for filing a form MRB 3 alone, without an initial application or application for renewal.~~]

§36.7. Application Review.

(a) [~~Initial review.~~] If an incomplete application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for acceptance.

(b) [~~Incomplete application.~~] The applicant has 20 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered [~~deemed to be~~] withdrawn [~~by the applicant~~].

(c) [~~Complete application.~~] An application is complete when [~~it~~]:

(1) it contains all of the items required pursuant to [~~in~~] §36.4 of this title (relating to Application for Certificate of Registration);

(2) it conforms to the Act, this chapter, and the program's instructions;

(3) all fees have been paid pursuant to §36.19 [~~as provided by §36.21~~] of this title (relating to Fees); and

(4) all requests for additional information have been satisfied.

§36.9. Renewal of Certificate of Registration.

(a) To renew a certificate of registration, [~~a person must submit~~] an application for renewal must be submitted [~~Application for Renewal (MRB 4) to the department~~] using the department's online application [~~forms provided by the department via the program's website~~] and by submitting the appropriate renewal fee pursuant to §36.19 [~~as outlined in §36.21~~] of this title (relating to Fees) prior to the certificate's expiration date.

(b) An application [~~A person may not apply~~] for a renewal of registration may not be submitted more than 45 days before the expiration date of the current certificate of registration.

[~~(c) If a person submits a timely MRB 4, but the department has not acted upon it before the old certificate of registration expires, the old certificate of registration continues in effect until the MRB 4 is approved or denied by the department.~~]

(c) [~~(d)~~] A [~~person continuing to conduct business as a metal recycling entity whose~~] certificate of registration which has been expired less than one year may be renewed by submitting the appropriate renewal fee pursuant to §36.19 of this title [~~for 90 days or less may renew the certificate by paying $750 to the department~~].

(d) A certificate of registration which has expired for one year or more may not be renewed. An application for a new certificate of registration must be submitted according to the procedures pursuant to §36.4 of this title (relating to Application for Certificate of Registration).

[~~(e) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying $1,000 to the department.~~]

[~~(f) A person continuing to conduct business as a metal recycling entity whose certificate of registration has been expired for one year or more may not renew the certificate. This person must obtain a new certificate of registration utilizing the initial application procedure set forth in §36.4 of this title (relating to Application for Certificate of Registration), submitting the initial application fee, and paying an additional administrative penalty of $1,000.~~]

§36.10. Denial of Application for Certificate of Registration.

(a) The department may deny an application for a certificate of registration if:

(1) the applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) the applicant has sold, bartered, or offered to sell or barter a certificate of registration;

[~~(3) the applicant has previously been convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act;~~]

(3) [~~(4)~~] the applicant fails to provide [~~disclose~~] the required information [~~persons involved in the regular course of the business of a metal recycling entity~~] on the application [~~Application for Certificate of Registration (MRB 1)~~] pursuant to §36.4(b) [~~§36.4(c)~~] of this title (relating to Application for Certificate of Registration); or

(4) [~~(5)~~] the applicant is ineligible under the requirements of §36.16 [~~has been convicted of a felony or misdemeanor offense as outlined in §36.15~~] of this title (relating to Disqualifying Offenses); or[~~.~~]

(5) the applicant's certificate of registration was revoked within two years of the date of application.

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department pursuant to [~~as outlined in~~] §36.17 of this title (relating to Informal Hearings).

§36.11. Reprimands and Suspensions of a Certificate of Registration.

(a) (No change.)

(b) For a [~~first time~~] violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period [~~of~~] not to exceed three months.

(d) For a third violation of subsection (a) of this section within the preceding two year period, the person's certificate of registration may be suspended for a period [~~of~~] not to exceed six months.

(e) Upon the suspension of a certificate of registration under this section, a person may request a hearing before the department pursuant to [~~as outlined in~~] §36.17 of this title (relating to Informal Hearings).

§36.12. Revocation of a Certificate of Registration.

(a) The department may revoke a certificate of registration of a person who is registered under the Act if the person:

(1) commits multiple violations of the same type pursuant to [~~as outlined in~~] §36.11(a) of this title (relating to Reprimands and Suspensions of a Certificate of Registration);

(2) obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) sells, barters, or offers to sell or barter a certificate of registration;

[~~(4) is convicted of knowingly purchasing stolen regulated material pursuant to §1956.040(b) of the Act; or~~]

(4) [~~(5)~~] is convicted of a disqualifying felony or misdemeanor offense pursuant to §36.16 [~~as outlined in §36.15~~] of this title (relating to Disqualifying Offenses); or[~~.~~]

(5) submits to the department a fee payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department pursuant to [~~as outlined in~~] §36.17 of this title (relating to Informal Hearings).

§36.13. Recertification after Revocation.

(a) Except as provided in subsection (b) of this section, a [~~A~~] person whose certificate of registration has been revoked may not be recertified [~~reapply~~] prior to the passage of at least two [~~five~~] years from the date of revocation. [~~The previously revoked applicant must follow the procedures set forth in §36.4 of this title (relating to Application for Certificate of Registration) for new applications.~~]

(b) A person whose certificate of registration has been revoked for a dishonored or reversed payment, as provided under §36.12(a)(5) of this title (relating to Revocation of a Certificate of Registration), may reapply at any time.

(c) A person whose certificate of registration has been revoked must follow the procedures pursuant to §36.4 of this title (relating to Application for Certificate of Registration) for new applications.

§36.14. Reporting Requirements.

(a) Not later than the second working day [~~seventh day~~] after the date of purchase or other acquisition of regulated material for which a record is required pursuant to [~~under~~] §1956.033 of the Act, the [~~a metal recycling~~] entity shall collect and submit to the department an electronic transaction report using the department's online reporting system. The report must contain the following [~~a Report of Purchase for Metal Recycling Entity (MRB 5), containing~~]:

(1) the place and date of the purchase;

(2) the name and physical address of the seller[~~, the address may not be a post office box, of each individual~~] from whom the regulated material is purchased. This address may not be a post office box; [~~or obtained;~~]

(3) the identifying number of the seller's personal identification document;

(4) a written description made in accordance with the custom of the trade of the commodity type and quantity of the purchased regulated material; [~~and~~]

(5) make, model, color, and license plate number and state of the motor vehicle used to transport the regulated material; and

(6) [~~(5)~~] confirmation that a written statement or other written documentation that the person is the legal owner of or is lawfully entitled to sell the regulated material is on file with the purchasing entity.

[~~(b) A completed MRB 5 shall be sent to the department by facsimile, electronic mail, or electronic upload via the program's website.~~]

(b) [~~(c)~~] If a metal recycling entity purchases bronze material that is a cemetery vase, receptacle, memorial, or statuary or a pipe that can reasonably be identified as aluminum irrigation pipe, the entity shall transmit [~~notify the department of the purchase by the close of the next business day~~] via facsimile or[~~;~~] electronic mail to[~~; or by calling~~] the department by the close of the next [~~at the number listed on the program's website and shall file an MRB 5 with the department within five~~] business day a report containing the information required pursuant to §1956.033 of the Act or an electronic transaction report using the department's online reporting system. [~~days.~~]

§36.15. Waiver from Electronic Reporting.

(a) If an entity reports fewer than 100 transactions per month, the entity may request from the department a waiver from electronic reporting. If a waiver is granted, the entity must file reportable transactions with the department on an approved form.

(b) If an entity cannot meet the electronic reporting requirements the entity may request from the department a waiver from electronic reporting. The request must clearly describe the technological inadequacies.

(c) The waiver must be requested annually in writing.

(d) If granted, the waiver will remain in effect for no longer than twelve months, beginning the first day of the month following the month the waiver was granted.

(e) The department may rescind a waiver if the reason for the waiver no longer exists.

§36.16. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration on the grounds the applicant, registrant and/or business owner thereof has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined that the following types of offenses directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one or more of the following categories may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided below are for illustrative purposes and are not intended to exclude similar offenses in other codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to, the following:

(1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);

(2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);

(3) Theft (Texas Penal Code, Chapter 31);

(4) Fraud (Texas Penal Code, Chapter 32);

(5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);

(6) Perjury and Other Falsification (Texas Penal Code, Chapter 37); and

(7) Any violation of Texas Occupations Code, §1956.038 or §1956.040.

(c) A felony conviction for one of the offenses listed in subsection (b) of this section that directly relates to the duties and responsibilities of metal recycling entities, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g), is disqualifying for ten years from the date of the conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five years from the date of conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(e) For the purposes of this chapter, all references to "conviction" are to those for which the judgment has become final.

(f) The certificate of registration shall be revoked for the imprisonment of the certificate holder following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation for which the certificate is sought and is disqualifying for five years from the date of the conviction.

(g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.

§36.17. Informal Hearings.

(a) A person whose application for a certification of registration is denied, whose certificate of registration is suspended or revoked, who is prohibited from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, or who is reprimanded is entitled to a hearing before the department, governed by Chapter 29 of this title (relating to Practice and Procedure) and Texas Government Code, Chapter 2001, if the person submits to the department a written request for the hearing in compliance with subsection (b) of this section.

(b) A written request for a hearing must be submitted by mail, facsimile, or e-mail, to the department in the manner provided on the department's metals recycling program website within 20 calendar days after receipt of notice of denial, suspension, revocation, or reprimand. If a written request for a hearing is not made within 20 calendar days of the date notice was received, the person has waived their right to a hearing under this section.

(c) An informal hearing will be scheduled and conducted by the department's [~~manager of the program or the manager's~~] designee [~~in the manner prescribed by the department on the program's website~~].

(d) After the conclusion of the informal hearing, the hearing officer will issue a written statement of findings to the person at the person's address on file.

(e) Within 20 calendar days of the date the statement of findings was received, the person may request an administrative hearing before the State Office of Administrative Hearings (SOAH).

§36.18. Hearings Before the State Office of Administrative Hearings.

(a) A request for a hearing before the State Office of Administrative Hearings (SOAH) must be submitted in writing [~~{~~]by mail, facsimile, or e-mail, to the department in the manner provided on the metals recycling program's website[~~}~~] within 20 calendar days of the receipt of the statement of findings sent to the person's address on file.

(b) Procedures for a hearing before SOAH shall follow the process set forth in Texas Government Code, Chapter 2001 and Chapter 29 of this title (relating to Practice and Procedure).

§36.19. Fees.

(a) The department has prescribed the following non-refundable fees for purposes of administering the Act:

(1) Initial Application. A $500 fee is assessed each time an application for a new certificate of registration is filed in accordance with §36.4 of this title (relating to Application for Certificate of Registration). Applicants conducting business at more than one location must submit a $500 fee for a new certificate of registration for the first location and an additional $500 fee for each additional location.

(2) Statutory Agent Disclosure. A $10 fee is assessed each time statutory agent disclosure information is filed, without an initial application or application for renewal.

(3) Change in Ownership. A $10 fee is assessed each time change of ownership information is filed, without an initial application or application for renewal.

(4) Renewal Certificate of Registration. A $500 fee is assessed for each location renewing a certificate of registration in accordance with §36.9 of this title (relating to Renewal of Certificate of Registration). A certificate of registration which has been expired for 90 days or less may be renewed by submitting a renewal application using the department's online application and by paying $750. A certificate of registration which has been expired for more than 90 days but less than one year may be renewed by submitting a renewal application using the department's online application and by paying $1,000.

(5) Add or Change Location. A $500 fee is assessed each time a metal recycling entity adds or changes a fixed location.

(b) Payment of fees shall be in the manner prescribed by the department. If payment is dishonored or reversed prior to issuance of the certificate, the application will be abandoned as "incomplete". If the certificate or registration has been issued prior to being dishonored or reversed, revocation proceedings will be initiated pursuant to §36.12 of this title (relating to Revocation of Certificate of Registration). The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

§36.20. Documentation on Fire-Salvaged Insulated Communications Wire.

Pursuant to §1956.032(a)(5) and (h) of the Act, a person attempting to sell insulated communications wire that has been burned wholly or partly to remove the insulation must display to the purchasing metal recycling entity the following documentation establishing that the material was salvaged from a fire:

(1) An official report from a fire marshal or other fire department officer, confirming the occurrence of a fire at a particular physical address;

(2) Photographs indicating the source of the wire, with an affidavit from the photographer attesting to the accuracy of the photographs and the physical address at which the photographs were taken; and

(3) Evidence of the seller's ownership of the property at which the fire occurred or an affidavit from the owner reflecting the owner's consent for the material to be removed and sold.

§36.21. Military Exemption from Penalty for Failure to Renew in Timely Manner.

A person who holds a certificate of registration issued under the Act is exempt from any increased fee or other penalty imposed by the department for failing to renew the certificate of registration in a timely manner, if the person establishes to the satisfaction of the department that the person failed to renew the certificate of registration in a timely manner because the person was on active duty in the United States armed forces serving outside this state.

§36.22. Extension of Certain Deadlines for Active Military Personnel.

A person who holds a certificate of registration issued under the Act, is a member of the state military forces or a reserve component of the armed forces of the United States, and is ordered to active duty by proper authority is entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any requirement related to the renewal of the person certificate of registration.

§36.23. Alternative License Procedure for Military Spouse.

An applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States may apply for a certificate of registration under this section if the applicant:

(1) establishes to the satisfaction of the department that the applicant holds a current certificate of registration or the equivalent issued by another state with requirements substantially equivalent to the Act's requirements for the certificate of registration; or

(2) within the five years preceding the application date held the certificate of registration in this state that expired while the applicant lived in another state for at least six months.

§36.24. Adding or Changing Locations.

To conduct business at a new or additional location a registrant must apply for a certificate of registration for each location, pay all fees required pursuant to §36.19 of this title (relating to Fees), and obtain a certificate of registration for each location.

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

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205536
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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37 TAC §§36.15, 36.16, 36.19 - 36.21

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

The Texas Department of Public Safety (the department) proposes the repeal of §§36.15, 36.16, and 36.19 - 36.21, concerning Metals Registration.

Specifically, §36.16 is repealed, as it is duplicative of statutory authority and therefore unnecessary. Section 36.19 is repealed, as dealers of crafted precious metals are no longer regulated by the department pursuant to 82nd Legislative Session, 2011, SB 694. The proposed repeal of §36.20 is necessary to eliminate paper forms. Section 36.15 and §36.21 are repealed to reorganize existing language and improve the clarity of Chapter 36.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be a reduction in metal theft and related crimes and improved efficiency in the administration of the statute through greater use of online portals and electronic data transmission and storage.

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

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

Comments on this proposal may be submitted to Steve Moninger, Office of Regulatory Counsel, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, (512) 424-5842. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the Department's work and Texas Occupations Code, §1956.013, which

allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms.

Texas Government Code, §411.004(3), and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.15. Disqualifying Offenses.

§36.16. Additional and Accelerated Enforcement Actions.

§36.19. Temporary Location Registration of Dealers of Crafted Precious Metal.

§36.20. Forms.

§36.21. Fees.

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

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205535
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 424-5848

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

The Texas Department of Transportation (department) proposes the repeal of §§9.30, 9.31, 9.33 - 9.39, and 9.41 - 9.43 and new §§9.30 - 9.39, concerning Subchapter C, Contracting for Architectural, Engineering, and Surveying Services.

EXPLANATION OF PROPOSED REPEALS AND NEW SECTIONS

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act). The new sections reorganize the structure of the rules to follow a logical sequence of precertification, provider selection, contract negotiation, and contract administration. The new structure permits easier location of and access to the information as needed and makes the subchapter as a whole more understandable.

Substantive changes address two areas, administrative qualification and provider selection. First, the department proposes a procedure to allow providers to become administratively qualified through self-certification, in accordance with the Federal Highway Administration (FHWA) regulations. Second, the department proposes two new provider selection processes, the federal process and the small contract process.

The department requested input from FHWA and the American Council of Engineering Companies to help formulate the new rules.

New §9.30, Purpose, is based on current §9.30. The rule is reorganized to improve understandability, and the text is revised for clarity. The text pertaining to precertification is not incorporated into new §9.30 because the topic of precertification is secondary to the overall purpose of the subchapter and precertification is addressed in new §9.33. New §9.30 includes the citations for the applicable federal laws because new §9.35 establishes a provider selection process specifically for contracts reimbursed with federal-aid highway program (FAHP) funds.

New §9.31, Definitions, is based on current §9.31. Terms deemed to be sufficiently defined elsewhere are not incorporated into the new definitions section. These terms include: "AASHTO," "administrative qualification," "available personnel," "border district," "close out," "consultant," "debarment certification," "DBE/HUB goal participation," "Disadvantaged Business Enterprise (DBE)," "department project manager," "firm," "indefinite deliverable contract," Historically Underutilized Business (HUB)," "indirect cost rate guidance," "interview contract guide (ICG)," "licensed state land surveyor," "lower tier debarment certification," "lower tier participant," "metropolitan district", "professional engineer," "professional services provider," "registered architect," "registered professional land surveyor," "request for proposal," "short list meeting," "specific deliverable contract," and "team." The definitions of the remaining terms are revised for clarity. New §9.31 adds seven new terms: "executive director," "non-listed category," "provider," "request for qualification," "standard work category," "statement of qualification," and "solicitation."

New §9.32, Selection Processes, Contract Types, Selection Types, and Projected Contracts, is based on current §9.39. The subsections are reorganized to improve understandability, and the text is revised for clarity. The text in current §9.39(a)(3), pertaining to emergency contracts, is not incorporated into new §9.32 because new §9.37 addresses the emergency contract process. The text of current §9.39(b)(1) pertaining to the dollar limits for indefinite deliverable contracts is also not incorporated into new §9.32. The dollar limits will instead be controlled through management directives. New §9.32(a) introduces the department's four selection types, standard process, federal process, small contract process, and emergency process.

New §9.33, Precertification, is based on current §9.41 and §9.43. The subsections are reorganized to improve understandability, and the text is revised for clarity. New §9.33(c)(3) clarifies that a firm's precertification status is only applicable to the incorporated business entity that employs the individual on whom the firm's precertification status is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

New §9.34, Standard Process, is based on several current subsections, detailed below. The subsections are reorganized to improve understandability, and the text is revised for clarity. It should be noted that new §9.34 encapsulates the department's core provider selection process.

New §9.34(b), pertaining to administrative qualification, is based on current §9.42. New §9.34(b)(2) clarifies that indirect cost rates must be based on entire incorporated entities and not on their individual units or divisions. New §9.34(b)(3) establishes provisions for administrative qualification through self-certification. New §9.34(b)(4) clarifies that administrative qualification is

only applicable to the incorporated business entity upon which the indirect cost rate is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

New §9.34(c), pertaining to the consultant selection team (CST), is based on current §9.34(a). New §9.34(c)(4) clarifies that if a CST member leaves the CST, the selection process may continue subject to the professional registration requirements.

New §9.34(d), pertaining to the notice of intent (NOI), is based on current §9.33(a). Current §9.33(a)(1) - (9) is not incorporated into new §9.34 because the text is overly prescriptive for the purposes of the subchapter.

New §9.34(e), pertaining to the letter of interest (LOI), simplifies procedures by eliminating the requirements under current §9.33(b), as the text is overly prescriptive for the purposes of the subchapter.

New §9.34(f) clarifies that an individual proposed as a replacement for the prime provider project manager or a task leader must be designated in the LOI and must satisfy the applicable precertification and non-listed category requirements.

New §9.34(g), pertaining to long list qualification, is based on current §9.34(b).

New §9.34(h), pertaining to long list evaluation, is based on current §9.34(c) and (d). New §9.34(h)(1) establishes a permissive approach to the long list evaluation criteria, thereby providing greater flexibility. Also, current §9.34(e), pertaining to scoring the letters of interest, is not incorporated into new §9.34 because the text is unnecessary for the purposes of the subchapter. New §9.34(h)(2), pertaining to the short list, is based on current §9.34(f). New §9.34(h)(3), pertaining to notifying short-listed prime providers, is based on current §9.34(g).

New §9.34(i), pertaining to short list evaluation, is based on current §9.35 and §9.36. Current §9.35(a) and (b) and §9.36(a) - (c) are not incorporated into new §9.34 because the text is overly prescriptive for the purposes of the subchapter. New §9.34(i)(1)(A) clarifies that interview attendance requirements will be specified in the NOI. New §9.34(i)(2) is based on current §9.35(d) and §9.36(e). New §9.34(i)(2) establishes a permissive approach to the short list evaluation criteria, thereby providing greater flexibility.

New §9.34(j), pertaining to provider selection, is based on current §9.37. Current §9.37(a)(1) is not incorporated into new §9.34, removing the requirement for a 70/30 split in scoring interviews and proposals and providing greater flexibility. Current §9.37(b) is not incorporated into new §9.34, because new §9.34(j)(2) establishes a tie-breaking mechanism based on the relative importance factor of each short list criterion. Current §9.37(c), pertaining to selection summary, is not incorporated into new §9.34 because the text is unnecessary for the purposes of the subchapter. New §9.34(j)(3) and (4), pertaining to submittal of selection and notification, is based on current §9.37(d) and (e). New §9.34(j)(5), pertaining to an appeal, is based on current §9.37(g) and references §9.7, pertaining to Protest of Contract Practices or Procedures.

New §9.35, Federal Process, establishes a provider selection process for engineering or design related contracts directly related to a construction project and reimbursed with federal-aid highway program (FAHP) funds. New §9.35 is substantively similar to new §9.34, with the exception that new §9.35(b) establishes that, under the federal process, firms providing engineering and design related services must be administratively qualified, in accordance with Federal Highway Administration regulations.

New §9.36, Small Contract Process, establishes a provider selection process for architectural, engineering, or surveying services contracts that meet the following requirements: (1) the contract is not subject to the federal process; (2) the contract value does not exceed $750,000 in total; (3) the selection type is single contract; and (4) the contract type is specific deliverable. New §9.36 incorporates certain elements of the standard process, including new §9.34(b), pertaining to administrative qualification, and new §9.34(c), pertaining to the CST. A key distinction between the two processes is that the small contract process does not utilize a short list phase. The department issues a solicitation, known as a request for qualification. A provider responds by submitting a statement of qualification (SOQ). A provider is evaluated and selected solely on the information presented in its SOQ, without participating in an interview or submitting a proposal.

New §9.37, Emergency Contract Process, is based on current §9.39(a)(3). The current subsection is reorganized to improve understandability, and the current text is revised for clarity. Current §9.39(a)(3)(C), pertaining to the negotiation of emergency contracts, is not incorporated into new §9.37 because new §9.38(b) addresses this matter.

New §9.38, Negotiations, is based on current §9.37(f). The current subsection is reorganized to improve understandability, and the current text is revised for clarity. Current §9.37(f)(2)(A) - (C) is not incorporated into new §9.38 because the text is overly prescriptive for the purposes of the subchapter. Current §9.37(g), pertaining to appealing the selection process, is not incorporated into new §9.38 because new §9.34(j)(5) addresses this matter. New §9.38(a) establishes the negotiations requirements for contracts subject to the standard, federal, and small contract processes. New §9.38(b) establishes the negotiations requirements for contracts subject to the emergency contract process. New §9.38(c) establishes the negotiations requirements for indefinite deliverable work authorizations.

New §9.39, Contract Administration, is based on current §9.38. The current subsections are reorganized to improve understandability, and the current text is revised for clarity. Current §9.38(b)(1)(A) and (B), pertaining to the department project manager and prime provider project manager, are not incorporated into new §9.39 because the text is unnecessary for the purposes of the subchapter. Similarly, current §9.38(c), pertaining to supplemental agreements, and §9.38(e), pertaining to contract close out, are not incorporated into new §9.39. Current §9.38(d), pertaining to indefinite deliverable work authorization negotiation, is not incorporated into new §9.39 because new §9.38(c) addresses this matter.

FISCAL NOTE

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

Mark Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals and new sections.

PUBLIC BENEFIT AND COST

Mr. Marek has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new sections will be a clearer understanding of the procedures for provider precertification and selection and the negotiation and administration of contracts with architects, engineers, and surveyors. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal of §§9.30, 9.31, 9.33 - 9.39, and 9.41 - 9.43 and new §§9.30 - 9.39 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "new §§9.30 - 9.39." The deadline for receipt of comments is 5:00 p.m. on December 10, 2012. 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 repeals and new sections, or is an employee of the department.

43 TAC §§9.30, 9.31, 9.33 - 9.39, 9.41 - 9.43

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

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.30. Purpose.
§9.31. Definitions.
§9.33. Notice of Intent and Letter of Interest.
§9.34. Short List Determination.
§9.35. Short List Proposals and Evaluation.
§9.36. Short List Interviews and Evaluation.
§9.37. Selection.
§9.38. Contract Administration.
§9.39. Selection Types, Contract Types, and Projected Contracts.
§9.41. Precertification.
§9.42. Administrative Qualification.
§9.43. Precertification Requirements.

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

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

TRD-201205540
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 463-8683

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43 TAC §§9.30 - 9.39

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

§9.30. Purpose.

This subchapter establishes standard procedures for the selection of providers of architectural, engineering, and surveying services and the negotiation and management of contracts that require a registered architect, professional engineer, or registered professional land surveyor, in accordance with Transportation Code, §223.041; Government Code, Chapter 2254, Subchapter A; 23 U.S.C. §112(b)(2); 40 U.S.C. §§1101-1104; and 23 C.F.R. Part 172.

§9.31. Definitions.

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

(1) Audit Office--An office of the department whose internal function is to conduct independent reviews of departmental operations and procedures to ensure that they are functioning as intended and whose external function is to audit negotiated contracts including the review of cost reimbursement and indirect cost rate data.

(2) Consultant Certification Information System (CCIS)--A computer system used to collect and store information related to the department's certification of providers.

(3) Consultant selection team--The department's team that evaluates letters of interest, statements of qualification, interviews, and proposals and selects the provider based on demonstrated qualifications.

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

(5) Design Division--A division of the department whose functions include providing guidance and oversight for the department's contracting processes and procedures for architectural, engineering, or surveying services.

(6) Executive director--The executive director of the department.

(7) Letter of interest--A document submitted by a prime provider in response to a notice of intent and evaluated by the consultant selection team, used as part of the long list stage in the standard and federal processes.

(8) Long list--The list of prime providers submitting responsive letters of interest, used as part of the standard and federal processes.

(9) Managing office--The department's organizational subunit responsible for overseeing the provider selection, leading the contract negotiations, administering the contract, and processing invoices.

(10) Managing officer--The head of a managing office.

(11) Non-listed category (NLC)--A formal classification, developed by a managing office, used to define a specific sub-discipline of work and provide the minimum technical qualifications for performing the work. NLCs address project-specific work categories not covered by the standard work categories.

(12) Notice of intent--A public announcement that advertises the department's intent to enter into one or more architectural, engineering, or surveying contracts and provides instructions for preparation and submittal of a letter of interest, used as part of the standard and federal processes.

(13) Precertification--A department process conducted to verify that a provider meets the minimum technical requirements to perform work under a standard work category.

(14) Prime provider--A firm that provides or proposes to provide architectural, engineering, or surveying services under contract with the state.

(15) Provider--A prime provider or subprovider.

(16) Relative importance factor (RIF)--The numerical weight assigned to an evaluation criterion, used by the consultant selection team to score letters of interest, statements of qualification, interviews, and proposals.

(17) Request for qualification (RFQ)--A public announcement that advertises the department's intent to enter into an architectural, engineering, or surveying contract and provides instructions for the preparation and submittal of a statement of qualification, used as part of the small contract process.

(18) Short list--The list of prime providers most qualified to perform the services specified in a notice of intent, as demonstrated by the letter of interest scores.

(19) Solicitation--A notice of intent or request for qualification.

(20) Standard work category--A formal classification, developed by the department, used to define a specific sub-group of work and provide the minimum technical qualifications for performing the work.

(21) Statement of qualification (SOQ)--A document prepared by a prime provider, submitted in response to a request for qualification.

(22) Subprovider--A firm that provides or supports, or proposes to provide or support, architectural, engineering, or surveying services under contract with a prime provider.

§9.32. Selection Processes, Contract Types, Selection Types, and Projected Contracts.

(a) Selection processes. The department will use four selection processes: federal, standard, small contract, and emergency.

(b) Contract types. The department will offer two types of contracts: indefinite deliverable and specific deliverable.

(1) An indefinite deliverable contract may be used for a single project or for multiple projects. The notice of intent will describe the typical work types to be performed under the contract.

(A) Categorical limitations on contract dollar value may be established by the executive director or the executive director's designee.

(B) The contract period in which initial work authorizations may be issued may not be longer than two years after the date of contract execution, unless approved by the Texas Transportation Commission before the notice of intent posting date.

(C) Supplemental agreements may be issued to extend the contract period beyond two years, but only as necessary to complete work on an initial work authorization.

(2) A specific deliverable contract may be used for a single project or for multiple projects. The solicitation will specify the specific deliverables to be provided under the contract.

(c) Selection types.

(1) Single contract selection. One contract will result from the solicitation.

(2) Multiple contract selection. More than one contract of similar work types will result from the notice of intent. The notice of intent will indicate the number and type of contracts and specify a range of scores for prime providers that will be considered qualified to perform the work.

(A) If more prime providers fall within the specified range than the anticipated number of contracts, the prime providers will be selected in order of ranking in the evaluation process.

(B) If the anticipated number of contracts is greater than the number of prime providers that fall within the specified range, each prime provider will be selected for one contract. The remaining contracts will be awarded to the prime providers in order of ranking in the evaluation process, until each prime provider has two contracts or all of the contracts have been awarded. If there is still an excess of contracts, the process for awarding the second round of contracts will be repeated until all contracts are awarded.

(d) Projected contracts list. Quarterly, the department will publish on the department's website a list of projected contracts for architectural, engineering, and surveying services.

§9.33. Precertification.

(a) Standard work categories. Precertification establishes the minimum technical qualifications to perform work under a standard work category. The Texas Transportation Commission, by minute order, may add, revise, or delete a standard work category.

(b) Contract eligibility.

(1) To be eligible to perform work under a standard work category, a provider must have active precertification status in that work category by the closing date of the solicitation.

(2) The department will not delay the selection process or the contract execution to accommodate a provider that is not in active precertification status.

(c) Precertification status of firms and employees.

(1) A firm is precertified in a standard work category only if it employs an individual precertified in that category.

(2) A firm that employs an individual who is precertified in multiple standard work categories is, by extension, precertified in each of those categories.

(3) A firm's precertification status is only applicable to the incorporated business entity that employs the individual upon whom the firm's precertification status is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

(4) An employee's precertification status is based solely on the individual's qualifications. A firm's qualifications may not serve as a basis for precertifying an employee.

(5) Precertification status shall transfer with the employee, should the employee leave the firm.

(d) Precertification website. The department will maintain a precertification website that will include:

(1) the definitions of the standard work categories;

(2) the minimum technical qualifications to perform work under the standard work categories; and

(3) the precertification application form, with instructions.

(e) Application and review process.

(1) To apply for precertification in a standard work category, a firm must employ an individual qualified to become precertified in that category and present the individual's qualifications in a precertification application.

(2) The department will consider the following factors in reviewing an application:

(A) the minimum technical qualifications as applicable;

(B) the individual's professional license or registration;

(C) the individual's experience and training; and

(D) any record of unprofessional conduct, on the part of either the individual or the firm.

(3) If a submitted application is incomplete or inaccurate, the firm will be given an opportunity to correct the application and provide additional information. The firm must provide the information within 30 days after the day that it receives the department's notice that the application is incomplete or inaccurate.

(4) If the information is not provided under paragraph (3) of this subsection within the 30-day period prescribed by that paragraph, the application will be processed at the end of that 30-day period with the information available.

(5) The department will make a good faith effort to make a precertification determination within 60 days after the day that the department receives a complete and accurate application or if paragraph (4) of this subsection applies, within 60 days after the day that the 30-day period prescribed by that paragraph ends.

(f) Appeal. A firm may appeal a precertification denial to the Design Division by submitting additional information within 30 days after the day that it receives written notification of the denial. The information must justify why precertification should be granted. The department will review the information and make a second precertification determination. A firm may file a written complaint regarding a second precertification denial to the executive director or the executive director's designee.

(g) Updates. A firm must report any change in its application information no later than 45 days after the day that the change occurs.

(h) Data management. A firm's application information will be maintained in the CCIS.

(i) Annual renewal. To maintain contract eligibility, a firm must renew its precertification status no later than March 31 of each year. The firm must submit its annual renewal through the CCIS.

(1) A firm that has renewed its precertification status by the annual deadline will maintain an active precertification status in the standard work categories in which it is precertified.

(2) A firm that has not renewed its precertification by the annual deadline will be placed in inactive status.

§9.34. Standard Process.

(a) Applicability. The standard process, described under this section, may be used for any architectural, engineering, or surveying services contract not subject to §9.35 of this subchapter (relating to Federal Process).

(b) Administrative qualification.

(1) Administrative qualification is a process used by the department to verify that a provider has an indirect cost rate that meets department requirements. Except as provided by paragraph (8) of this subsection, to compete for a contract under this section a provider either must be administratively qualified or must accept an indirect cost rate under paragraph (7) of this subsection.

(2) Factors in determining administrative qualification.

(A) A provider may demonstrate administrative qualification by an audit or by self-certification of its incorporated entity. Indirect cost rates must be based on the entire incorporated entity and may not be based on the entity's units or divisions.

(i) An audit may be performed by an independent certified public accountant (CPA), an agency of the federal government, another state transportation agency, or a local transit agency. An audit performed by an independent CPA must be conducted in accordance with the current versions of 48 C.F.R. Part 31, the Generally Accepted Government Auditing Standards (GAGAS), and the American Association of State Highway Transportation Officials (AASHTO) Uniform Audit and Accounting Guide. The provider must provide the department with unrestricted access to the audit work papers, records, and other information as requested by the Audit Office.

(ii) Self-certification may be conducted by the provider and must include a cost report and an internal controls report. The self-certified cost report must comply with the current versions of 48 C.F.R. Part 31, the GAGAS, and the AASHTO Uniform Audit and Accounting Guide. The self-certified internal control report must certify the provider has internal controls in place within its organization. Both the cost report and the internal control report must be signed by a company officer and notarized.

(B) The audit or self-certification shall be based on the provider's fiscal year. The indirect cost rate, as approved by the Audit Office, shall become effective six months after the end of the provider's fiscal year, or immediately if filed more than six months after the end of the provider's fiscal year. It shall be effective no more than twelve months and shall expire eighteen months after the end of the fiscal year upon which it is based.

(C) A provider must submit on an annual basis a compensation analysis for all executives in accordance with the AASHTO Uniform Audit and Accounting Guide.

(D) The department may audit the indirect cost rate of a provider under contract with, or seeking to do business with, the department. These audits will be conducted in accordance with the criteria outlined in this subsection.

(E) A provider must submit a signed Certification of Final Indirect Costs with the audit report or self-certification. The certification must follow the requirements of the Federal Highway Administration.

(3) Submittal and review process for administrative qualification.

(A) A provider must submit its administrative qualification information to the Audit Office in accordance with the instructions on the department's website. Administrative qualification submittals will not be received by the Design Division.

(B) Upon review of an audit report or self-certification received from a provider, the Audit Office may request additional information from the provider. If the submittal is not complete and accurate, the Audit Office will return it to the provider for correction. Upon request for additional information by the Audit Office, the provider shall submit the information within 15 days after the day that it receives the Audit Office's request. If the information is not provided within the 15-day period, the submittal will be placed on pending status for an additional 15 days. If the information is not received within the additional 15-day period, the submittal will not be processed for administrative qualification.

(4) Administrative qualification is applicable only to the incorporated business entity upon which the indirect cost rate is based and does not extend to a subsidiary, affiliate, or parent of the incorporated entity.

(5) The Audit Office will provide a selected firm's indirect cost rate information to the managing office on notification from the Design Division, for use in negotiations under §9.38 of this subchapter (relating to Negotiations).

(6) The Audit Office will not provide a firm's administrative qualification information to the managing office or the consultant selection team before the selection of that firm.

(7) Providers not administratively qualified. The department may contract with a prime provider or allow the use of a subprovider that is not administratively qualified if:

(A) the provider has been in operation, as currently organized, for less than one fiscal year and the provider accepts an indirect cost rate developed by the Audit Office; or

(B) on request by the department during the selection process, the prime provider provides written certification that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the Audit Office.

(8) Exemptions to administrative qualification.

(A) A non-engineering firm is exempt from the administrative qualification requirement of this section.

(B) A provider performing a service under standard work category 18.2.1, subsurface utilities engineering, or any of the following work groups, as listed on the department's precertification website, is exempted from administrative qualification, to the extent of the service being performed:

(i) Group 6, bridge inspection;

(ii) Group 12, materials inspection and testing;

(iii) Group 14, geotechnical services;

(iv) Group 15, surveying and mapping; and

(v) Group 16, architecture.

(C) The Audit Office and Design Division may exempt services other than those indicated in subparagraph (B) of this paragraph on a case-by-case basis. Any request for an exemption must be received by the Audit Office by the closing date of the solicitation.

(c) Consultant selection team (CST).

(1) The department shall use a CST in selecting providers under this section.

(2) The CST shall be composed of the department employee designated as the CST chair, the department employee designated as the project manager, and at least one other department employee.

(3) At least one CST member must be a professional engineer, for engineering contracts; a registered architect, for architectural contracts; and either a professional engineer or registered professional land surveyor, for surveying contracts.

(4) If a CST member leaves the CST during the selection process, the process may continue with the remaining members, subject to paragraph (3) of this subsection.

(d) Notice of intent (NOI). Not fewer than 21 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an NOI providing the contract information and specifying the requirements for preparing and submitting a letter of interest.

(e) Letter of interest (LOI). To be considered, an LOI must comply with the requirements specified in the NOI.

(f) Replacements. An individual proposed as a replacement for the prime provider project manager or a task leader must be designated in the LOI and must satisfy the applicable precertification and NLC requirements.

(g) Long list qualification.

(1) The department may disqualify an LOI if the department has knowledge that a firm on the project team or an employee of a firm on the project team has a record of unprofessional conduct.

(2) If an LOI is not disqualified under paragraph (1) of this subsection, the CST will screen the LOI to determine whether it complies with the requirements specified in the NOI. Each LOI that meets these requirements will be considered responsive to the NOI, placed on a long list, and evaluated.

(h) Long list evaluation.

(1) Long list evaluation criteria. The CST will evaluate the long-listed LOIs to establish a short list according to the long list evaluation criteria specified in the NOI. These criteria may include:

(A) project understanding and approach;

(B) project manager's experience with similar projects;

(C) similar project related experience of the task leaders responsible for the major work categories identified in the NOI; and

(D) other qualifications-based criteria approved by the Design Division.

(2) Short list. The short list will consist of the most qualified providers, as indicated by the long list scores.

(A) For single contract selections, the minimum number of short-listed prime providers is three, unless fewer than three prime providers submitted responsive LOIs.

(B) For multiple contract selections, the minimum number of short-listed prime providers is the number of desired contracts plus three, unless fewer than the desired number of prime providers submitted responsive LOIs.

(3) Notification.

(A) The department will notify each prime provider that submitted an LOI whether it was short-listed.

(B) The department will notify each short-listed prime provider whether a short list meeting will be held.

(i) Short list evaluation.

(1) Interviews and proposals. The department will evaluate the short-listed providers through interviews, proposals, or both.

(A) For interviews, the department will issue an Interview and Contract Guide (ICG) to each short-listed prime provider. The ICG will provide contract information and specify the requirements for the interview. Any requirements pertaining to interview attendance will be specified in the NOI.

(B) For proposals, the department will issue a Request for Proposal (RFP) to each short-listed prime provider. The RFP will provide contract information and specify the requirements for the preparation and submittal of a proposal.

(2) Short list evaluation criteria. The CST will evaluate the interviews and proposals according to the short list evaluation criteria specified in the ICG and RFP. These criteria may include:

(A) understanding of the scope of services;

(B) experience of the project manager and project team;

(C) ability to meet the project schedule;

(D) prime provider's quality assurance/quality control program;

(E) prime provider's past performance scores in the CCIS database for department contracts reflecting less than satisfactory performance; and

(F) other qualifications-based criteria approved by the Design Division.

(j) Selection.

(1) Basis of final selection. The CST will select the best qualified provider, as indicated by the short list scores.

(2) Tie scores. The managing officer will break a tie using the following method.

(A) Interviews only.

(i) The first tie breaker will be the scores for the interview criterion with the highest RIF.

(ii) The remaining interview criteria shall be compared in the order of decreasing RIF until the tie is broken.

(iii) If the providers have identical scores on all of the interview criteria, the provider will be chosen by random selection.

(B) Proposals only.

(i) The first tie breaker will be the scores for the proposal criterion with the highest RIF.

(ii) The remaining proposal criteria shall be compared in the order of decreasing RIF until the tie is broken.

(iii) If the providers have identical scores on all of the proposal criteria, the provider will be chosen by random selection.

(C) Interviews and proposals, both.

(i) If the interviews are weighted at 50 percent or more of the short list score, subparagraph (A)(i) and (ii) of this paragraph applies. If the providers have identical scores on all of the interview criteria, subparagraph (B)(i) - (iii) of this paragraph applies.

(ii) If the proposals are weighted at more than 50 percent of the short list score, subparagraph (B)(i) and (ii) of this paragraph applies. If the providers have identical scores on all of the proposal criteria, subparagraph (A)(i) - (iii) of this paragraph applies.

(D) Order of comparison. If the interview or proposal criteria have equal RIFs, the criteria will be compared in the order listed in the ICG or RFP.

(3) Submittal of selection. The managing officer will submit the evaluation documentation and recommendation for selection to the Design Division director for review. If the procedural review is acceptable, the executive director or the executive director's designee will concur with the selection.

(4) Notification. The department will:

(A) provide written notification to the prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each short-listed prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the short list and the selected provider on a web-based bulletin board.

(5) Appeal. A provider may file a written appeal concerning the selection process with the executive director or the executive director's designee as provided under §9.7 of this chapter (relating to Protest of Contract Practices or Procedures).

§9.35. Federal Process.

(a) This section applies to an engineering or design related service contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding.

(b) A firm providing engineering and design related services must be administratively qualified under §9.34(b)(2) - (6) of this subchapter (relating to Standard Process) by the closing date of the NOI to compete for contracts under this section. Paragraphs (7) and (8) of §9.34(b) of this subchapter do not apply to a contract under this section.

(c) Except as provided in subsection (b) of this section, the process described in §9.34 of this subchapter applies to contracts under this section.

§9.36. Small Contract Process.

(a) Applicability. The small contract process described under this section may be used for an architectural, engineering, or surveying services contract that meets the following requirements:

(1) the contract is not subject to §9.35 of this subchapter (relating to Federal Process);

(2) the contract value does not exceed $750,000 in total;

(3) the selection type is single contract; and

(4) the contract type is specific deliverable.

(b) Administrative qualification. Section 9.34(b) of this subchapter (relating to Standard Process) applies to contracts under this section.

(c) Consultant selection team. Section 9.34(c) of this subchapter applies to contracts under this section.

(d) Request for qualifications (RFQ). Not fewer than 14 calendar days before the solicitation closing date, the department will post on a web-based bulletin board an RFQ providing the contract information and specifying the requirements for preparing and submitting a statement of qualification.

(e) Statement of qualification (SOQ). To be considered, an SOQ must comply with the requirements specified in the RFQ.

(f) Replacements. An individual proposed as a replacement for the prime provider project manager or a task leader must be designated in the SOQ and must satisfy the applicable precertification and NLC requirements.

(g) Qualification for evaluation.

(1) The department may disqualify an SOQ if the department has knowledge that a firm on the project team or an employee of a firm on the project team has a record of unprofessional conduct.

(2) If an SOQ is not disqualified under paragraph (1) of this subsection, the CST will screen the SOQ to determine whether it complies with the requirements specified in the RFQ. Each SOQ that meets these requirements will be considered responsive to the RFQ and evaluated.

(h) SOQ evaluation. The CST will evaluate the responsive SOQs according to the following selection criteria specified in the RFQ. These criteria may include:

(1) project understanding and approach;

(2) the prime provider project manager's experience with similar projects;

(3) similar project-related experience of the task leaders responsible for the major work categories identified in the RFQ;

(4) past performance scores in the CCIS database for department contracts reflecting less than satisfactory performance; and

(5) other qualifications-based criteria approved by the Design Division.

(i) Selection.

(1) Basis of final selection. The CST will select the best qualified provider, as indicated by the SOQ scores.

(2) Tie scores. The managing officer will break a tie using the following method.

(A) The first tie breaker is the scores for the selection criterion with the highest RIF.

(B) The remaining selection criteria will be compared in the order of decreasing RIF until the tie is broken.

(C) If the providers have identical scores on all of the selection criteria, the provider will be chosen by random selection.

(3) Submittal of selection. Section 9.34(j)(3) of this subchapter applies to this section.

(4) Notification. The department will:

(A) provide written notification to a prime provider selected for contract negotiation and arrange a meeting to begin contract negotiations;

(B) provide written notification to each prime provider that was not selected, notifying the provider of the non-selection; and

(C) publish the selected provider on a web-based bulletin board.

(5) Appeal. Section 9.34(j)(5) of this subchapter applies to this section.

§9.37. Emergency Contract Process.

(a) Applicability. The emergency contract process described in this section may be used when the executive director or the executive director's designee certifies in writing that an emergency situation, including a safety hazard, a substantial disruption of the orderly flow of traffic and commerce, or a risk of substantial financial loss to the department, exists, and that an architectural, engineering, or surveying services contract is needed to address the situation.

(b) Administrative qualification. If the emergency contract is an engineering or design related services contract directly related to a highway construction project and reimbursed with federal-aid highway program (FAHP) funding, a provider must be administratively qualified to compete for the contract, and §9.34(b)(2) - (6) of this subchapter (relating to Standard Process) applies to this section. If the contract is not such a contract, a provider need not be administratively qualified to compete for the contract, and §9.34(b) of this subchapter applies to this section.

(c) Notification.

(1) After an emergency is certified, the department will review its list of precertified firms. If there are a sufficient number of firms, the department will notify at least three of these firms.

(2) The department will inform the firms of the nature of the emergency and will provide the firms with the specifications for the remedy.

(d) Evaluation and selection. The department will evaluate each firm's qualifications and select the best qualified firm to perform the services.

§9.38. Negotiations.

(a) Contract negotiations.

(1) A contract that is subject to §§9.34, 9.35, or 9.36 of this subchapter (relating to Standard Process, Federal Process, and Small Contract Process, respectively) will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory contract containing a fair and reasonable price for the services.

(3) A selected prime provider shall submit to the department the actual salary rates for the proposed team members and the non-salary costs, generated internally, to be billed directly. The department will reference this information in the negotiations.

(4) The department anticipates that a satisfactory contract containing a fair and reasonable price for the services may be negotiated within 30 days after the date that a selected prime provider is notified of the selection. If a solicitation specifies that more than one contract will be awarded, the time for negotiating the contracts is automatically extended by a period equal to the number of additional contracts to be awarded under that solicitation multiplied by five days. The Design Division director may grant additional extensions as required.

The solicitation may specify a shorter or longer time for the negotiations.

(5) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the selected prime provider and proceed under this paragraph.

(A) Single contract selection. The department will begin negotiations with the next highest-ranked prime provider. This process will continue as necessary through the three highest-ranked prime providers. If a fair and reasonable price cannot be negotiated with any of the three highest-ranked prime providers, the proposed contract shall be canceled. If the proposed contract is canceled, it may be re-advertised.

(B) Multiple contract selection. The department will begin negotiations with the next highest-ranked prime provider not selected for a contract. This process will continue as necessary through the short-listed prime providers. If a fair and reasonable price cannot be negotiated with any of the short-listed prime providers, the proposed contract shall be canceled. If the proposed contract is canceled, it may be re-advertised.

(b) Emergency contract negotiations.

(1) Contracts subject to §9.37 of this subchapter (relating to Emergency Contract Process) will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with the selected provider to establish a satisfactory contract containing a fair and reasonable price for the services.

(3) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the provider and begin negotiations with the next highest-ranked provider. This process will continue as necessary through the notified firms.

(4) If a fair and reasonable price cannot be negotiated with any of the notified firms, the department may take any measure necessary to identify and solicit a firm that is able to perform the services.

(c) Indefinite deliverable work authorization negotiations.

(1) Indefinite deliverable work authorizations will be negotiated in accordance with this subsection.

(2) The department will enter negotiations with a selected prime provider to establish a satisfactory work authorization containing a fair and reasonable price for the services.

(3) If the department determines that a fair and reasonable price cannot be negotiated, the department will terminate negotiations with the prime provider and begin negotiations with another prime provider with an indefinite deliverable contract.

§9.39. Contract Administration.

(a) Prime provider's percentage of work. A prime provider shall perform at least 30 percent of the contracted work with its own work force, unless otherwise approved by the Design Division director.

(b) Project manager replacement. The prime provider project manager may not be replaced without the prior written consent of the department.

(c) Department audits. The department may perform interim and final audits.

(d) Performance evaluations.

(1) The managing office will document the prime provider's performance on the contract by evaluating the project manager and the firm. Evaluations will be conducted during the ongoing contract activity and at the completion of the contract.

(2) Further evaluations pertaining to project constructability may be conducted during project construction and at the completion of the construction contract.

(3) The department will give a copy of each completed performance evaluation to the prime provider for review and comment. The prime provider's comments will be entered into the CCIS.

(4) Performance evaluation scores will be entered into the CCIS and may be used for the purpose of provider selection.

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

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

TRD-201205541
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 463-8683

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CHAPTER 12. PUBLIC DONATION AND PARTICIPATION PROGRAM
SUBCHAPTER K. ACKNOWLEDGMENT PROGRAM

43 TAC §§12.351 - 12.355

The Texas Department of Transportation (department) proposes new Subchapter K, Acknowledgment Program, §§12.351 - 12.355.

EXPLANATION OF PROPOSED NEW SECTIONS

New Subchapter K provides for a state acknowledgment program that will allow the department to place signs to acknowledge the acceptance of donations under Transportation Code, §201.206 for transportation services, such as mowing, litter and debris pick-up on the state's right of way, maintenance services for safety rest areas, toll gantry facilities, and Travel Information Centers.

Federal law generally prohibits advertisement in the state right of way. However, the Federal Highway Administration (FHWA) released new guidelines on March 13, 2012 allowing the use of sponsorship acknowledgment signs on state right of way. The new guidelines allow the use of business logos and emblems that were not originally allowed under the Adopt-a-Highway program. Through the new guidelines, FHWA has recognized a distinction between advertisements and acknowledgment signs. The guidelines provide the state the opportunity to acknowledge donations made by business entities through acknowledgment signs. The new guidelines limit the sign to recognition of the donation of a transportation service and prohibit the inclusion of any contact or location information.

The department may solicit proposals for one or more professional service vendors to market, administer, recruit, and secure sponsors for the program at no cost to the department. Under

the program a participating sponsor will be recognized with an acknowledgment sign near the location for which the services are being provided.

New §12.351, Purpose, states that the new subchapter authorizes the acknowledgment program and provides the general information about the program.

New §12.352, Definitions, provides the definitions for terms used within the subchapter. The terms are defined to provide a clear understanding of their usage within the subchapter.

New §12.353, Acknowledgment Program, authorizes the department to develop an acknowledgment program. The program will allow the recognition of monetary donations for highway-related purposes, as determined by the department and as required by the applicable federal guidelines. The section provides the basic program requirements, which comply with FHWA guidelines.

New §12.353 provides that the department may contract under §12.354 with one or more vendors to provide the marketing services and if so, the department will continue to provide the transportation service and sign installation. This allows the department to use an outside source for the parts of the program for which the department has limited expertise but to maintain control over the services that the department routinely handles. This will allow the greatest part of the funds to go toward the service by reducing administrative costs of the vendor.

New §12.353(g) prohibits the acceptance of donations from entities that are regulated by the department or that are involved in a contract, purchase, payment, or claim. This language allows for consistency with the current donation program. Subsection (h) prohibits an acknowledgment sign's reference to an alcoholic beverage, tobacco product, or sexually-oriented business. This maintains consistency with other department programs as these restrictions are also placed on advertisement in the *Texas Highways* magazine.

New §12.354, Acknowledgment Program Vendor Contract; Program Agreement, provides the requirements for the contract with the vendor. The section allows the department to contract with one or more vendors to provide the marketing services. It places specific requirements on the vendor's contract with the participating sponsors. These requirements ensure that the program complies with the federal guidelines. The vendor must maintain sponsor information and provide monthly and annual reports to the department. This will eliminate duplicative work by allowing the department to rely on the vendor's data. The vendor is responsible for notifying the participating sponsor if the sign must be relocated due to the need for a regulatory, warning, or guide sign. A delay in relocating the sign may result in the extension of the associated participation agreement, so that the participating sponsor receives a posted sign for the full time authorized by the agreement.

New §12.355, Acknowledgment Sign, provides the requirements for the acknowledgment signs. The sign must comply with the Texas Manual on Uniform Traffic Control Devices (TMUTCD), which regulates the size and format of the sign. The section also states that regulatory, warning, and guidance signs have priority over an acknowledgment sign. The TMUTCD has been adopted by the Texas Transportation Commission. The TMUTCD expressly provides requirements for acknowledgment signs, which cannot be changed without amendment of the manual by commission rule. Restatement of the specific sign requirements in this subchapter is unnecessary.

To comply with FHWA guidelines §12.355 requires that the sign be placed near the site for which the donation was offered and prohibits the location of an acknowledgment sign within one mile of another acknowledgment sign if the signs are facing the same direction and associated with the same highway-related purpose. The section also gives specific guidance for signs in the rest area and travel information centers. The requirements of this section mirror FHWA guidelines, which must be included in the department's program.

FISCAL NOTE

James Bass, 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 local governments as a result of enforcing or administering the new sections. Mr. Bass has also determined that there will be a positive impact for the state as the new rule will likely increase donations to the department. Based on information from other states that have a similar program, the department estimates that the acknowledgment program could increase donations by approximately $3.5 million per year.

Howard Holland, Director, Maintenance Division, 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. Holland 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 an increase in donations to the department to provide certain transportation services. 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 §§12.351 - 12.355 may be submitted to Robin Carter, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§§12.351 - 12.355." The deadline for receipt of comments is 5:00 p.m. on December 10, 2012. 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 Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.206.

§12.351. Purpose.

The purpose of this subchapter is to provide for a state acknowledgment program that allows the department to acknowledge donations for certain highway-related services such as ground maintenance identified as mowing, litter and debris pick-up on the state's right-of-way, and maintenance services for safety rest areas, Travel Information Centers, and

toll gantry facilities with federally approved acknowledgment signs in the state right-of-way.

§12.352. Definitions.

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

(1) Acknowledgment sign--A sign that is intended only to inform the traveling public that a highway-related service is sponsored by a participating sponsor.

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

(3) Participating sponsor--An individual, corporation, business, firm, group, or association that contributes towards a highway-related service.

(4) TMUTCD--Texas Manual on Uniform Traffic Control Devices issued by the department.

(5) Vendor--An individual or business that acts as the authorized agent of the department in the marketing, administration, and soliciting of a participating sponsor for the acknowledgment program.

§12.353. Acknowledgment Program.

(a) The department may develop an acknowledgment program to recognize monetary donations provided to benefit a highway-related service.

(b) A donation may be used only for the highway-related purpose for which it is made.

(c) The acknowledgment program is applicable to all state highways.

(d) Chapter 1, Subchapter M of this title (relating to Donations) does not apply to a donation accepted under this program.

(e) The department may contract with a vendor under §12.354 of this subchapter (relating to Acknowledgment Program Vendor Contract; Program Agreement) for services related to the program. If a vendor is used, the department will continue to manage and provide the highway-related services funded by the donations.

(f) The department will install and maintain the acknowledgment signs erected under this program.

(g) The department may not accept donations from an individual or entity that is regulated by the department or that is involved with the department through a contract, purchase, payment, or claim, and such an individual or entity may not participate in the acknowledgment program.

(h) The department may not place an acknowledgment sign that references:

(1) an alcoholic beverage;

(2) tobacco product; or

(3) sexually oriented business, product, or service.

§12.354. Acknowledgment Program Vendor Contract; Program Agreement.

(a) The department may contract with one or more individuals or businesses for professional services to market, administer, recruit, or secure sponsors for the acknowledgment program.

(b) The department will require a vendor to enter into an agreement prescribed by the department with each participating sponsor.

(c) The agreement must:

(1) be for a term of not less than two years;

(2) require that the participating sponsor comply with state law, including laws prohibiting discrimination based on race, religion, color, age, sex, or national origin;

(3) include a termination clause based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement is not in the public interest;

(4) provide the specific amount of the donation;

(5) state the fee or fees charged by the vendor to administer the program (directly or indirectly paid by the participating sponsor);

(6) state the specific service being sponsored;

(7) provide the location of the acknowledgment sign, to include roadway, exit number or crossroad, and county; and

(8) state the date of expiration of agreement.

(d) The vendor shall notify the department within three calendar days of receipt of a donation from a participating sponsor. The notification must include:

(1) the name of the participating sponsor;

(2) the transportation service for which the donation was made;

(3) the general location for the acknowledgment sign;

(4) the name, logo, or emblem requested by the participating sponsor to be placed on the sign; and

(5) the date on which the sponsorship agreement expires.

(e) The department will determine the location of each acknowledgment sign and promptly will provide the determination to the vendor. The vendor shall maintain the location information in the participating sponsor's file.

(f) The vendor shall furnish an annual report to the department. The annual report must include a listing of all participating sponsors for which the vendor has accepted a donation under an existing agreement, administrative fees collected, and the annual revenue submitted to the department for each program category. The department, in its discretion, may require one or more other reports from a vendor.

(g) The vendor shall furnish, in a format prescribed by the department, a monthly electronic inventory to the department. The inventory shall include:

(1) a list of all participating sponsors in the program for which the vendor is responsible;

(2) contact information on each participating sponsor including address and key contact name and telephone numbers;

(3) the location information for each acknowledgment sign, as provided at the time of installation by the department; and

(4) the date of expiration of the agreement for each participating sponsor.

(h) If the department determines that a regulatory, warning, or guide sign is needed at a location, an acknowledgment sign at or planned for that location will be removed or relocated. The vendor, as directed by the department, will notify the participating sponsor of the change. If an acknowledgment sign is removed and not relocated within 24 hours of the time of removal, the vendor may extend the participation agreement for a period equal to the number of days in which the acknowledgment sign was not posted.

(i) The department may award one or more contracts for professional services to market, administer, recruit, and secure sponsors for the acknowledgment program.

§12.355. Acknowledgment Sign.

(a) An acknowledgment sign must comply with the requirements of the TMUTCD, including the size and format requirement.

(b) Regulatory, warning, and guidance signs take precedence over an acknowledgment sign.

(c) An acknowledgment sign will be placed near the site for which the associated donation was offered.

(d) Except as provided in subsection (f) of this section, acknowledgment signs will be placed at least 1 mile apart from each other if facing in the same direction and associated with the same highway related purpose.

(e) An acknowledgment sign may not be appended to any other sign, sign assembly, or other traffic control device.

(f) If a donation is made for a rest area or travel information center the department:

(1) will install one acknowledgment sign for each direction of travel on the highway mainline; and

(2) may install an acknowledgment sign in the rest area or travel information center if that sign is not visible to the highway mainlane traffic and does not pose a safety risk to the rest area or travel information center users.

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

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

TRD-201205542
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 9, 2012
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.110

Proposed amended §45.110, published in the April 20, 2012, issue of the *Texas Register* (37 TexReg 2855), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205524

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 817. CHILD LABOR

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §817.2, §817.7

The Texas Workforce Commission withdraws the proposed amendment to §817.2 and new §817.7 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7735).

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205519
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: October 24, 2012
For further information, please call: (512) 475-0829

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SUBCHAPTER B. LIMITATIONS ON THE EMPLOYMENT OF CHILDREN

40 TAC §§817.21, 817.23, 817.24

The Texas Workforce Commission withdraws the proposed amendments to §§817.21, 817.23, and 817.24 which appeared in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7735).

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205520
Laurie Biscoe
Deputy Director, Workforce Programs
Texas Workforce Commission
Effective date: October 24, 2012
For further information, please call: (512) 475-0829

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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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER I. IMPLEMENTATION OF THE HELP AMERICA VOTE ACT OF 2002

The Office of the Secretary of State adopts the repeal and replacement of §§81.172 - 81.174, concerning Implementation of the Help America Vote Act of 2002, as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7541). The repeals and new rules are adopted without changes to the proposed text and will not be republished. The adoption of the repeals and new rules restores an earlier version of provisional voting procedures.

Restoration of the earlier version of the rules is necessary because the current version was promulgated in anticipation of U.S. Department of Justice ("DOJ") preclearance of Chapter 123, Senate Bill 14, 2011 Texas Legislature, relating to voter photo ID requirements. DOJ interposed an objection to Chapter 123, and, following litigation instituted by the State of Texas, on August 30, 2012, in *State of Texas v. Holder,* no. 12-cv-128, the United States District Court for the District of Columbia denied the State's request for a declaratory judgment preclearing Chapter 123 under Section 5 of the Federal voting Rights Act.

No comments were received on the proposal. The repeals and new rules are adopted with an expedited effective date of November 1, 2012.

1 TAC §§81.172 - 81.174

The repeals are adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code.

No other sections are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 29, 2012.

TRD-201205564

Keith Ingram

Director of Elections

Office of the Secretary of State

Effective date: November 1, 2012

Proposal publication date: September 28, 2012

For further information, please call: (512) 463-5650

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1 TAC §§81.172 - 81.174

The new rules are adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code.

No other sections are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.505

The Public Utility Commission of Texas (commission) adopts amendments to §25.505, relating to Resource Adequacy in the Electric Reliability Council of Texas Power Region, with changes to the proposed text as published in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2953). The proposed amend-

ments amend §25.505(g), relating to the scarcity pricing mechanism, by increasing the high and low system-wide offer caps and the peaker net margin, and removing outdated portions of the rule. This amendment is adopted under Project Number 40268. These amendments are competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e).

The commission received comments on the proposed amendments from Senator Wendy Davis; William Leek; Texas Power, LP; Consolidated Edison Solutions, Inc. (CES); Senator Rodney Ellis; Tony Caudill; Lone Star Chapter Sierra Club (Sierra Club); Blue & Silver Energy Consulting, LLC d/b/a Pro Star Energy Services (Pro-Star); Lower Colorado River Authority (LCRA); Odessa-Ector Power Partners, LP (Odessa); Environmental Defense Fund, Inc. (EDF); CPS Energy; Texas Demand Response Coalition; the Steering Committee of Cities Served by Oncor and the Texas Coalition for Affordable Power (collectively, Cities); Luminant Energy Company, LLC and Luminant Generation Company, LLC (Luminant); NRG Energy, Inc. (NRG); Panda Power Funds, LLC (Panda); IPR-GDF SUEZ Energy North America, Inc. (IPR-GDF SUEZ); Calpine Corporation, Exelon Corporation, IPR-GDF SUEZ Energy North America, Inc., Luminant Energy Company LLC, Luminant Generation Company LLC, and NextEra Energy Resources, LLC (collectively, the Group of Competitive Texas Power Suppliers); Texas Competitive Power Advocates (TCPA); Tenaska, Inc. (Tenaska); Calpine Corporation (Calpine); Public Citizen; The Solar Energy Industries Association (SEIA); The Texas Renewable Energy Industry Association (TREIA); Exelon Corporation (Exelon); Brazos Electric Power Cooperative, Inc. (Brazos Electric); Topaz Power Group (Topaz); Texas Energy Association for Marketers (TEAM); Texas Industrial Energy Consumers (TIEC); DC Energy Texas, LLC (DC Energy); Direct Energy; The Sustainable Energy and Economic Development Coalition (SEED); Viridity Energy, Inc. (Viridity); South Texas Electric Cooperative, Inc. (STEC); City of Houston; Representative Sylvester Turner; NextEra Energy Resources, LLC (NEER); AARP; and the Butler Firm.

General Comments and Comments on the Brattle Report

Several interested parties specifically commented on the Brattle Report, filed on June 1, 2012 in this project, and on policy options contained in the report. Pro-Star pointed to the Brattle Report to emphasize the need for regulatory certainty and to set the appropriate reserve margin targets going forward. Pro-Star recommended against a capacity market as set out in the Brattle Report. CPS Energy believed that once the commission defines the appropriate resource adequacy objective, the best policy path can be set. A reserve target, which may be variable or a minimum requirement, would necessitate different policy options. If the reserve margin is a target, then an energy-only market is appropriate, while the Brattle Report recommended a capacity market to meet a minimum requirement.

Cities, Luminant, TCPA, Calpine, Exelon, Topaz, TEAM, Direct Energy, and NRG agreed that the commission should evaluate the appropriate reserve margin objective. Luminant agreed with the conclusions of the Brattle Report that the commission should continue to evaluate and define resource adequacy objectives at the outset of the process and clarify the direction regarding the type and level of desired reserve margin. Exelon recommended that the reserve margin target be mandated. TEAM recommended maintaining the "1-in-10" resource adequacy standard. Direct Energy argued that the commission should determine the reliability objectives before determining the appropriate system-wide offer cap (SWOC) (also described as the high system-wide offer cap (HCAP)), and that this decision would determine the appropriate SWOC.

Luminant, NRG, TCPA, Tenaska, NEER, TIEC, City of Houston, and IPR-GDF Suez recommended that additional measures also be examined. Luminant and NRG believed that additional measures are needed, as the Brattle Report noted that increasing the offer cap to $9,000 would still not achieve the current reserve margin target, and urged the commission to continue the broader analysis of the Brattle Report recommendations. IPR-GDF Suez believed that alternatives such as adjustments to the operating reserve requirement, demand response, forward load obligations, or a reliability adequacy factor should be considered. IPR-GDF Suez recommended against the idea of state-sponsored financing or contracting to new generation. TCPA recommended that the commission refrain from considering any option that relies on a backstop mechanism involving regulated contracts for new generation supply. Tenaska and the City of Houston asked that the commission refrain from adopting any changes to the scarcity pricing mechanism before full consideration of the Brattle Report's recommendations. The City of Houston recommended that the commission implement a short-term resource adequacy "back-stop" as described in the Brattle Report to ensure that there is sufficient reliability. TIEC noted that if the $4,500 offer cap was in place in 2010 and 2011, it would have added approximately $4.5 and $4.7 billion per year to wholesale costs, and if the $9,000 offer cap was in place in 2011, it would have added $13.3 to $14 billion to wholesale costs. TIEC recommended that the other recommendations from the Brattle Report should not be adopted in a piecemeal fashion. Rather, issues such as the appropriate price cap, scarcity pricing curve, and the value of lost load should be considered simultaneously before considering prices above $4,500. TIEC recommended that the recommendations from the Brattle Report should be adopted in a subsequent rulemaking. NRG and IPR-GDF Suez disagreed with TIEC's cost estimations, and stated that the estimation is exaggerated and based on faulty premises. Luminant cautioned the commission from placing any weight on TIEC's cost analysis, arguing that the methodology is problematic because it does not account for probable behavioral changes that would accompany recent changes to the ERCOT protocols and an increase in the SWOC.

Panda Power stated that the current market design does not create the incentive to meet the resource adequacy needs of the commission. Panda Power believed that the surest way to achieve the target reserve margin is either to implement a capacity market or require that the reserve margin be carried by load serving entities and passed through to consumers. Brazos Electric recommended that the commission adopt and implement a market design mandating resource adequacy for all load serving entities, largely in the form of the Brattle Report's Option 4. Brazos Electric and Topaz believed that Options 1, 2, and 3 do not provide a viable long-term solution to ERCOT's resource deficit, while Options 4 and 5 do. Brazos Electric supports Option 4 because it believes that Option 4 will be easier to implement than Option 5. Option 4 avoids some of the problems experienced in other centralized capacity markets, and will be dependent on bilateral market activity, allowing ERCOT to benefit from innovation and economic efficiency. TEAM recommended Option 3 only as an intermediate solution towards Option 1, as demand response penetration in the market allows or as further study of alternatives such as Option 5. STEC recommended that all load serving entities be required to show that they have acquired

firm resources for their firm load. STEC believed that the Brattle Report showed that Option 4 results in increased reliability with more economic efficiency while lowering investor risk and allowing the market to solve the resource adequacy concerns. NEER believed that the most efficient means to ensure long-term generation adequacy is through a centralized capacity market.

Senator Wendy Davis urged the commission to deliberate carefully on increasing the SWOC and refrain from taking steps without considering the cost to Texas homes and businesses. Senator Ellis also asked if the effect of increasing the price cap was evaluated on residential rates. EDF stated it was important to recognize and quantify the effect that commission actions will have on customers. Cities believed that any increase to the SWOC can fairly be expected to increase wholesale prices - otherwise, the proposed proceeding has no point - and the resulting increased revenue to generators must be obtained from somewhere. Cities argued that there is no analysis on what the proposal or the Brattle Report recommendations would cost load and retail customers in the ERCOT market. Cities believed that declining to adopt the rule at this time is a reasonable course of action.

William Leek opposed the proposal and did not see how increasing the SWOC guarantees that the generators will build new generation facilities. Senator Ellis also asked what guarantees that raising the cap will actually result in new generation. Tony Caudill stated that the proposed rule will lead to the loss of manufacturing in the deregulated areas. CES, Sierra Club, EDF, Texas Demand Response Coalition, NRG, IPR-GDF Suez, Brazos Electric, Public Citizen, Luminant, TEAM, Viridity, STEC, CPS, and Pro-Star supported expanding demand response programs to address resource adequacy needs. CES stated that energy efficiency and demand response can address near-term resource adequacy far more quickly and economically than building new generation. Sierra Club supported alternatives to raising the SWOC, such as increased energy efficiency and demand response, changes relating to third-party ownership of solar facilities, and implementation of a 500 megawatt (MW) non-wind rule. EDF recommended that expansion of demand response should emphasize participation by residential and small business customers, and that the commission should expedite more effective market-based demand response programs, such as "load participation in SCED (security constrained economic dispatch)" for all customer classes. EDF also recommended greater resource diversity, such as solar, to meet peaking energy needs. Public Citizen and SEED also pointed to other alternatives such as energy efficiency, the 500 MW non-wind renewable energy portfolio standard (RPS), and "load in SCED" as alternatives to address resource adequacy. Viridity remarked that demand resources have extremely short lead times and require small capital investment, and Texas has enormous untapped potential to deploy demand resources to support resource adequacy. Viridity also noted that integrating demand response will help to mitigate market power and deter gaming behavior. Luminant emphasized that demand response as referenced in the Brattle Report should not dampen prices, but should appropriately reflect the scarcity conditions that prompted the demand response.

Texas Demand Response Coalition pointed out that the Brattle Report states that the energy-only market will not be realized without significant levels of demand response. The Texas Demand Response Coalition requested that the commission take the following actions either in this docket or subsequent dockets: develop a reliability demand response procurement mechanism to address the expected 2014 shortfall in ERCOT's reserve margin; in addressing the policy options discussion in the Brattle Report, focus on the role that demand response can play in ensuring resource adequacy in the ERCOT market; and beyond the Brattle Report, open a proceeding to consider the full range of opportunities for demand response to participate in the Texas markets. The Texas Demand Response Coalition also described how demand response would play a role in any other policy options set out in the Brattle Report. CPS Energy and TIEC supported the expansion of demand response, but disagreed with the recommendation to expand the Emergency Response Service framework, arguing that capacity payments for the interruption of load actually have a depressing effect on market prices and should not be relied upon to facilitate long-term resource adequacy.

The Sierra Club supported a smoother and more predictable power balance penalty curve as suggested by Commissioner Anderson. Public Citizen also suggested a similar proposal to the power balance penalty curve, with a low value of $200 and a cap of $3,000. LCRA also supported a gradual scarcity pricing curve as suggested in the Brattle Report.

SEIA stated that solar power could provide important reliability service, and described how solar has a high effective peak capacity value, is quick to market, is modular, is scalable, has minimal operating and maintenance costs, and has no fuel costs. SEIA recommended that the commission consider additional pricing mechanisms to facilitate the deployment of reliable resources, including solar. TREIA urged that care must be taken to ensure that renewable energy resources can fully participate in any additional market design changes. The Butler Firm stated that the greatest deficiency in the debate about resource adequacy is the failure to address the role solar energy and coastal wind can play in maintaining reserves, and that the commission should seek to encourage renewable generation at time of system peaks.

CPS Energy agreed that any market enhancements should allow for renewable energy participation, but disagreed with TREIA and SEIA that there should be specific measures directed at encouraging development of renewable resources. CPS Energy argued that there should not be special provisions in the context of resource adequacy. TIEC agreed with this position, arguing that the commission should dismiss requests to obtain subsidies, mandates, or other favorable treatment for particular products.

Commission Response

The commission appreciates the comments on the various options set out in The Brattle Group's report, ERCOT Investment Incentives and Resource Adequacy dated June 1, 2012 (Brattle Report). Following the request for comments in this proceeding, the commission initiated Project Number 40000, *Commission Proceeding to Ensure Resource Adequacy in Texas,* in which the commission will evaluate the various options and recommendations set out in the Brattle Report and by stakeholders. However, the commission concludes that it needs to take action now in this rulemaking to continue to increase the incentives for resource adequacy. Earlier this year, in Project Number 37897, *PUC Proceeding Relating to Resource Adequacy and Reserve Adequacy and Shortage Pricing,* the commission raised the HCAP from $3,000 to $4,500 by adopting new §25.508. New §25.508 raises the HCAP from $3,000 to $4,500 beginning on August 1, 2012 and ending on the effective date of any amendment to the high system-wide offer cap in §25.505. The commission adopted §25.508 as the first step of a plan to raise both the HCAP and the low system-wide offer cap (LCAP) over time.

By further raising the HCAP and LCAP over time in this rulemaking, the commission will be providing for an economically efficient means of supporting resource adequacy, by increasing the incentives for demand response and increasing the incentives for the construction of new generation and for generation to be available and producing electricity when it is needed most. Therefore raising the HCAP and LCAP should be done regardless of any additional measures the commission takes to support resource adequacy. The Brattle Report concludes that raising the HCAP to $9,000 as adopted in this rulemaking, absent additional measures, will produce an estimated equilibrium reserve margin of only 10%, well below ERCOT's target reserve margin of 13.75%. However, increasing the HCAP and LCAP in this rule will not be the only action that the commission will take. The commission is contemplating additional changes to the market in Project Number 40000, to study options for maintaining resource adequacy at appropriate levels. By adopting economically efficient measures to support resource adequacy, the commission is minimizing the cost of resource adequacy measures to electric customers in ERCOT.

The commission requested comments on the following questions:

1. Should the sequence of changing the high system-wide offer cap (HCAP) increase at a different rate and over a different period? For example, are any of the following cases preferable to that proposed in the rule?

Figure: 16 TAC Chapter 25--Preamble

Sierra Club, Cities, Tenaska, Topaz, Public Citizen, Luminant, NEER, TIEC, SEED, City of Houston, Group of Competitive Texas Power Suppliers, and TEAM opposed raising the HCAP from $4,500.

State Representative Sylvester Turner urged the commission to slow down and fully consider the impact to consumers and businesses by raising the offer cap to $4,500. Representative Turner did not believe all stakeholders and affected parties have had an adequate opportunity to assess the true effects of raising the offer cap by 50%.

LCRA and Cities expressed concern that increasing the SWOC at the levels proposed may lead to increased costs for market participants. LCRA stated this would be due to excessive price volatility and risk in the market. Cities and Public Citizen recommended that the commission should wait to determine the effects of the changes that the commission and ERCOT have already made, and then ERCOT, the commission, and stakeholders can more accurately determine what action, if any, should be taken next. Cities opposed any increase to the SWOC, but to the extent that the commission does increase the offer cap, the SWOC should only rise to $9,000 in periods of extreme scarcity, when load shedding is occurring.

Luminant supported implementation of the $4,500 HCAP effective August 1, 2012. Luminant disagreed that a $4,500 HCAP alone will solve the resource adequacy problem and urged the commission to continue its broader analysis of the ERCOT market and the Brattle Report recommendations Luminant supported an approach that avoids volatile prices and additional financial risks for market participants by adopting a $4,500 increase to the HCAP now, while continuing to quickly explore other market design improvement opportunities such as those presented in the Brattle Report and examine whether the HCAP should be increased above $4,500 in conjunction with those improvements.

Tenaska, Topaz, TIEC, and City of Houston believed that any further increases to the cap are premature in light of the findings of the Brattle Report and do not allow for thorough consideration and proper implementation of those recommendations. NEER supported raising the SWOC to $4,500 but not any higher without additional market modifications. SEED opposed raising the HCAP and peaker net margin (PNM) and any modifications to the power balance penalty curve in the short period of time after the commission and ERCOT have made many changes to the market that will affect future prices. Sierra Club disagreed with raising the SWOC in 2013 and suggested that the commission wait and assess the impacts of raising the SWOC on adequacy approximately a year from now. Sierra Club suggested that the commission prepare the market for the entrance of demand response before any scarcity prices are raised. If the commission does raise the caps, Sierra Club would be supportive of a slight rise in the HCAP.

TEAM stated that the market should have time to adapt to the changes and review the changes with actual pricing data that result from them before instituting significant increases to the HCAP that will create market volatility but not necessarily change bidding behavior. If the HCAP is raised, it should only be to a price that has been analyzed to be the value of lost load (VOLL) for ERCOT customers, and then only if VOLL prices are analyzed to be sufficient to draw generation investment commitments. If the HCAP is increased, a more measured progression is preferable so that the results of each increase can be observed and the market can better prevent over-corrections to generator price signals. TEAM does not think the commission should consider additional increases in the HCAP unless and until the market achieves more price sensitive demand response.

TIEC opposed increasing the SWOC higher than $4,500 at this time. Increasing the SWOC to $4,500 should not take effect until a full year after the commission makes a final decision on that increase. Further, if the commission adopted a $4,500 SWOC, TIEC suggested that the PNM trigger and LCAP should be eliminated. If the commission seeks to adopt a long-term SWOC without any of the more comprehensive changes that the Brattle Report recommends in conjunction with a VOLL price cap, then TIEC's analysis showed that $4,500/MWh is the appropriate SWOC. If the commission considers increasing the SWOC above $4,500 or implementing a VOLL price cap, TIEC suggested the commission needs to concurrently implement a number of other market changes recommended by the Brattle Report.

The City of Houston suggested that the commission review the entirety of the Brattle Group's recommendations before adopting an increase in the price cap. The City of Houston also stated that the commission should consider in this project the issue of whether any action to raise the SWOC constitutes a change in law so as to allow REPs to pass along electricity price increases to end-use customers under §25.475. The City of Houston suggested that such an increase in the offer cap would not trigger the right to pass on such costs.

If the commission recommended a reserve margin target, CPS Energy recommended a SWOC of $4,500, with a demand curve that may administratively set the price at $9,000. In this situation, CPS Energy also recommended that the commission make load participation in SCED the highest priority. CPS Energy believed that price responsive demand must offer in at the VOLL, and since some demand offers may be over the $4,500 SWOC, there

needs to be an exemption for demand offers or alternatively a different SWOC for demand resources.

AARP believed the commission should take an appropriately deliberate approach to modifying the current market rules. AARP stated that no changes should be made without an analysis of the costs to consumers and no changes should be made without reasonable assurance that the policy chosen will achieve reliability goals. AARP suggested the long-term policy options considered in the Brattle Report should be analyzed for their expected and worst-case impacts on Texas electricity customers. Similarly, AARP recommended that any short-term adjustments should be evaluated in terms of their expected and potential impacts on Texas consumers. AARP does not want the commission to make short-term changes to the market rules.

Odessa, Texas Demand Response Coalition, Calpine, SEIA, Direct Energy, Brazos Electric, DC Energy, Viridity, Luminant, and TREIA supported raising the SWOC. Odessa supported the increases in the HCAP as set out in the proposal, stating the $9,000/megawatt-hour (MWh) SWOC is needed and suggested that the phase-in dates are a reasonable implementation and should not be done faster.

NRG agreed with the Brattle Group's conclusion that the ERCOT SWOC should ultimately be increased $3,000 to $9,000 or a similarly high level consistent with the average VOLL. As implementation steps, NRG supported raising the offer cap to $5,000 in 2013, $7,000 in 2014, and $9,000 in 2015, or an alternative aggressive increase to achieve $9,000 cap as early as 2014. NRG believed that increasing the offer cap beyond the $4,500 level must be contingent upon reforming the credit requirements and processes at ERCOT to ensure the higher caps do not unduly harm market liquidity. While NRG supported the commission's exploration of the broader recommendations of the Brattle Report in a separate project, it urges the commission to move expeditiously to raise offer caps for future years. NRG disagreed with parties that urged the commission to take a slow approach. NRG recognized that increasing the cap is only part of the solution, but will serve as the foundation for making additional market improvements and will provide certainty to investors considering additional generation investment in ERCOT. NRG noted that the $9,000 cap is not inconsistent with other potential market designs.

Panda recommended increasing the caps by April 2013 and suggested that the HCAP should be set at the $9,000/MWh level. TREIA agreed with the recommendation of the Brattle Group report that the offer cap should be set to $9,000/MWh. Viridity did not disagree with the commission's proposal to raise the SWOC and believed that allowing prices to rise to the proposed levels during times of scarcity will eventually help to encourage the development of new generation and the deployment of other resources. Viridity requested that the commission's resource adequacy efforts evaluate the contribution that demand resources can make.

Direct Energy believed that the HCAP may need to increase above $4,500/MWh in order to incentivize generation investment and demand response that will consistently meet the reliability target. Direct Energy recommended that the commission direct ERCOT to examine the level of capital necessary to participate in a market design with a significantly higher HCAP and determine whether or not ERCOT's current credit policies adequately collateralize the risk due to a significantly higher HCAP.

STEC recommended a more gradual rising of the HCAP to a more moderate amount that should be coupled with a requirement that all load serving entities, including retail electric providers (REPs), be required to show that they have acquired firm resources for their firm load along with placing a high priority on demand response. STEC urged that the start date for each change in the HCAP coincide with the calendar year to prevent confusion. STEC proposed that a $4,500 HCAP become effective January 1, 2013; a $5,250 HCAP become effective January 1, 2015; and an HCAP of $6,000 become effective January 1, 2016.

IPR-GDF SUEZ supported measures that improve opportunities for return on generation investment and reduce risk to the system such as increasing the SWOC in graduated steps in tandem with changes to credit support requirements and examining other alternatives to augment the SWOC. IPR-GDF SUEZ stated that it is critical to implement credit and collateral requirement reforms prior to any additional increase in SWOC. IPR-GDF SUEZ suggested that the SWOC be set to $6,000/MWh for 2013 and to $7,500/MWh for 2014.

TCPA did not have a recommendation on the specific HCAP levels, but suggested that the commission begin evaluating additional measures that may need to be employed to bridge the gap between the economic equilibrium reserve margins of the energy-only market and those reserve margin levels deemed acceptable to electricity consumers and policy-makers. TCPA urged the commission to finalize its decision on HCAP levels as soon as is reasonably practical.

Brazos recommended a gradual increase in the HCAP as set out in Case 1 in the proposed rule, going to $6,000/MWh in 2016, that is coordinated with implementation of Option 4 in the Brattle Group report. Brazos stated that a more rapid increase in the HCAP is inconsistent with the lead time to develop new capacity for ERCOT. Brazos recommended that the Brattle Group's Market Enhancements 5, 6, and 7 that should be addressed by ERCOT to improve price signals to generators and develop demand response that can respond to high prices, and that these enhancements should be implemented in parallel with raising the HCAP.

DC Energy supported a phased-in approach of the proposed increase and requested that the commission provide as much notification as possible prior to the first scheduled HCAP increase. DC Energy believed that a final rulemaking setting out the increase that is issued in the third quarter of 2012 and effective on June 1, 2013 would be appropriate. DC Energy believed that the proposed increases to the HCAP, along with enabling demand response resources to participate in the SCED and addressing the price suppression issues as outlined in the Brattle report, would be an appropriate starting point in order to achieve ERCOT's resource adequacy targets.

Direct Energy stated that the commission should determine the reliability objectives of the market design before determining the appropriate HCAP. If the commission determines that the reserve margin level is a requirement, then Direct Energy believed additional market features are needed to meet the reliability requirement. Direct Energy believed that the HCAP likely needs to increase above $4,500 per MWh to incentivize generation investment and demand response that will provide adequate reliability, but only if the commission determines the reserve margin level will be a targeted amount determined by market forces. Direct Energy believed that the commission should decide the appropriate HCAP level by the end of this year. Direct Energy requested

that the commission phase-in the increase over two years if the commission chooses an HCAP higher than $6,000/MWh.

Texas Demand Response Coalition did not disagree with the proposal to increase the SWOC to $9,000. The Texas Demand Response Coalition agreed that allowing prices to rise to the proposed levels during times of scarcity will encourage the development of new generation and other resources, but that demand response will play a key role in addressing the resource adequacy issue.

Pro-Star recognized that increasing the SWOC to $9,000 would not meet the current ERCOT reserve target. Instead, Pro-Star agreed that addressing the issue will require a multi-prong approach. Pro-Star also recommended that the start date of any increase begin on July 1st instead of June 1st, because the summer strip for energy pricing is defined as the July-August period rather than June-September for calculating the 4CP. Pro-Star believes that this would better match the change in price caps with how power is traded in the wholesale market and should reduce concerns about the effects of raising the price cap on liquidity.

Commission Response

The commission concludes that the HCAP and LCAP should be raised in the manner provided for in the proposed rule. As discussed previously, the Brattle Report concludes that raising the HCAP to $9,000 as proposed in this rulemaking, absent additional measures, will produce an estimated equilibrium reserve margin of only 10%, well below ERCOT's target reserve margin of 13.75%. Raising the HCAP and LCAP in the manner provided for in the proposed rule is an economically efficient means of supporting resource adequacy and should therefore be done regardless of any additional measures the commission takes to support resource adequacy. The Brattle Report notes that other energy-only markets have determined that the VOLL is from $3,000 to $12,000 and that a "high VOLL-based price cap is a theoretically efficient market price during load-shed events because it reflects the price that customers would have been willing to pay to avoid curtailment."

The commission disagrees that it should wait to make a decision to further increase the HCAP and LCAP. As stated in Project Number 37897, the commission must act quickly and decisively to address resource adequacy issues. Most generation facilities take several years to be developed. By setting the SWOC increases in this rule well in advance of when they take effect, the commission is promoting regulatory certainty and encouraging generation developers to begin taking the steps necessary to develop additional generation. Acting now also encourages the development of demand-side resources, which can also have significant lead times. Pro-Star made a recommendation to change the start date of any increase in the offer cap to July 1 instead of June 1, because according to Pro-Star this change would better match the offer cap changes with how power is traded in the wholesale market. The commission declines to make this change. No other commenter expressed this concern. The commission is adopting the changes in offer caps many months before the changes take effect, which will provide sufficient time for any adjustments in wholesale power trading.

2. Is the use of the peaker net margin (PNM) method described in the rule the appropriate mechanism to measure resource adequacy in an energy-only market? If not, what should replace it? Should the PNM trigger amount be the cost of new entry (CONE) or a multiple of the CONE as determined by ERCOT? Should the trigger causing the system-wide offer cap to be reset to the low system offer cap be based on a calendar year or a rolling 12-month period, or should the use of the mechanism be based on hitting the trigger for a single year, or for multiple years? Should variability in the weather be taken into consideration in determining whether the PNM trigger is met?

Odessa and NRG supported the elimination of the PNM trigger. Odessa did not believe the PNM is a useful mechanism for measuring resource adequacy. Odessa opined that in a truly competitive market, there would be a mechanism that limits the amount of revenue that a peaking unit can earn only if it was accompanied by a floor mechanism that guaranteed the peaking unit with a minimum level of revenue. Since a peaking generator is not supported by such floor payment mechanism in ERCOT, it needs the opportunity to average the high revenue years with the low revenue years over the long term. NRG believed that the existence of the PNM and unpredictable drop in offer caps could be a reason for the financial community to hesitate when financing ERCOT projects. However, as discussed below, NRG also supported the recommendation in the Brattle Report to increase the PNM to approximately three times the CONE.

TIEC advocated for the elimination of the PNM trigger and the LCAP if the commission adopts a $4,500 SWOC. TIEC asserted that the PNM levels that are being considered in the rule are unlikely to come into play and the LCAP would likely be unworkable in practice. As an example, TIEC stated that if the PNM threshold were hit before the end of the summer peak season, a reduction in the SWOC to the LCAP could eliminate certain high-cost resources from the market and cause certain price-responsive loads to choose to take power, which could degrade reliability regardless of whether generation revenues have been sufficient to incentivize future generation development.

In reply comments, Luminant disagreed with TIEC and Odessa Ector that the PNM trigger and the LCAP should be eliminated, arguing that if the PNM trigger and LCAP are set at the right level and the PNM is measured in a way that accurately reflects revenues actually earned by generators, then the PNM trigger and LCAP should operate to protect against extreme market outcomes, while still allowing generators to earn sufficient revenues over the life of their investment.

In reply comments, Cities rejected Odessa's claims that the PNM fails to recognize that a generator needs to earn additional revenue in some years to make up for insufficient revenue in other years. Cities noted that the current PNM threshold has never been met and contended that it is, therefore, unlikely that the existence of the PNM/LCAP has played a role in the investment decisions of generators in Texas. Furthermore, by setting the PNM threshold at substantially more than the annualized revenue requirement of a peaker unit, the commission has already appropriately considered the fact that generators experience both low revenues and high revenues years.

While not advocating for the elimination of the PNM, TCPA, Exelon, and Topaz argued that the PNM is not an appropriate method to measure resource adequacy in an energy-only market; rather, it is designed to be only a trigger for the LCAP. TCPA, Topaz, and Direct Energy stated that the PNM should be set at a level that does not interfere with the natural boom and bust cycle of revenue returns, and investors must have an expectation that recovering revenues from lean years is possible without hitting the PNM trigger. The PNM trigger should only serve as a protection from major market failures. Calpine and Exelon argued that the PNM does not promote or ensure resource adequacy. Calpine stated that the PNM also serves as a signal

that something could be amiss in the market that requires a review of current market conditions and market design. Exelon and Topaz pointed out that the PNM is a historical look-back that merely calculates possible margins in a given year for an ERCOT unit and therefore provides no investment signal. Exelon argued that in the energy-only construct in ERCOT, the PNM should reflect revenues needed over a number of years to attract investment. Topaz contended that the current PNM assumes that peakers are available for every price spike and does not properly account for maintenance and related outages that might remove a unit from the market when prices unexpectedly rise. Topaz, therefore, supported the proposed increases to the LCAP and the PNM because the current LCAP and PNM trigger increase the risk to investors that ERCOT prices could be depressed after just a single extreme year and advocated for a third party review to determine the appropriate measure for the margins required to incent new entry.

IPR-GDF Suez stated that increasing the PNM threshold and LCAP are important steps in the right direction while the Group of Competitive Texas Power Suppliers supported the concept of a properly set PNM as a guardrail to protect consumers from extreme market conditions or periods of sustained scarcity. The Group of Competitive Texas Power Suppliers believed that the PNM trigger, as currently set, serves as a threat to stable price signals and further delays potential investment. While Luminant supported the PNM mechanism, it contended that the current PNM trigger is not high enough to allow recovery of sufficient revenues in the rare years when revenues reach high enough levels to justify long-term investment and is not reflective of actual generator revenues given that actual peaking generators are able to earn only 60 to 85% of the theoretical PNM due to imperfect dispatch and various operating costs. Furthermore, should the PNM trigger be reached, the current LCAP is set too low to ensure resource adequacy because it may impede investment decisions at its current level. Brazos Electric also considered the PNM to be an appropriate measure for the economic incentives available to new resources in the current energy-only market design. However, according to Brazos Electric, the adoption of the Brattle Report's Option 4 (Mandatory Resource Adequacy Requirement for load serving entities (LSEs)) is a more certain means to economically motivate the market to build sufficient reserves.

TEAM, Cities, and STEC noted that when the PNM was originally adopted by the commission, it was intended as a protective mechanism for consumers that were put in place to prevent excessive wealth transfer from load to generators rather than as a measure of resource adequacy. Arguing that the PNM was designed as a protective measure for consumers from sustained high prices by providing a "circuit breaker" effect and resetting the HCAP to a LCAP if the market "over heats," TEAM suggested that the PNM should continue to be set at a high enough level such that it is not likely to be reached when the market is properly functioning. Cities urged that the PNM/LCAP mechanism be retained in the rule.

SEIA supported increasing the PNM threshold to catalyze investment in new capacity while the commission considers additional pricing mechanisms to facilitate deployment of reliable resources, including solar.

Several parties addressed the question of whether the PNM trigger amount should be the CONE or a multiple of the CONE as determined by ERCOT. Pro-Star, Odessa, CPS Energy, Cities, Luminant, NRG, IPR-GDF Suez, Group of Competitive Texas Power Suppliers, TCPA, Calpine, Exelon, Brazos Electric, and DC Energy recommended setting the PNM trigger amount to be a multiple of the CONE.

Odessa and Cities would apply a multiplier of two to the CONE in establishing the PNM trigger amount if the commission decides to continue with the PNM mechanism. If the commission decides to continue with the PNM mechanism, Odessa suggested that setting the PNM equal to two times the CONE is reasonable as is the suggestion of $300/kilowatt (kW)-year contained in the Brattle Group Study. Odessa recommended a PNM trigger amount that is higher than the CONE to allow returns on investment in above average years to offset below average years. Odessa also supported the proposed increase in the PNM from the current $175,000 to at least $262,500 to ensure that generation developers would not discount the increases in the SWOC in the proposed rule due to the probability that the proposed higher SWOC levels increase the likelihood that the current PNM amount of $175,000 would be reached. Cities noted that its recommendation to apply a multiplier of two to the CONE is similar to the multiplier applied by the commission in 2006 in reaching the current PNM trigger amount. Cities strongly recommended that the CONE amount should be arrived at in a transparent manner either in a commission project or an ERCOT stakeholder process. In its reply comments, IPR-GDF Suez disagreed with the Cities' suggestion that only a multiplier of two be applied to the CONE, arguing that if the PNM were triggered at a level that fails to appreciate the inherent mismatch between any short-term PNM and the 25 to 40 year horizon on generation investment, it could send erratic price signals.

CPS Energy, Luminant, NRG Energy, IPR-GDF Suez, Group of Competitive Texas Power Suppliers, TCPA, Calpine, Exelon, Odessa, and Brazos Electric supported increasing the current PNM trigger amount to three times the CONE or approximately $300,000/MW-year as suggested in the Brattle Report. CPS Energy opined that its recommended PNM trigger amount would protect the broader Texas market without impeding the revenue needed for new entry because it could reduce some of the swings of entry and exit that an energy-only market will experience. Calpine also agreed with the Brattle study recommendation to undertake a study of the methodology for calculating the PNM and the appropriate PNM level. NRG suggested periodic analysis should be conducted to ensure that the PNM remains at the same multiple of CONE. IPR-GDF Suez, Group of Competitive Texas Power Suppliers, and Calpine would adjust the PNM trigger amount annually according to the Handy-Whitman Index while TCPA recommends that the PNM be re-evaluated by an outside third party and updated regularly as appropriate. In addition to increasing the PNM trigger to three times the CONE for a new gas-fired combustion turbine, Luminant recommended that the PNM trigger amount should be initially set at three times the CONE of $105,000 per MW per year for a new gas-fired combustion turbine as estimated in the Brattle report; the PNM calculation should be discounted to 72.5 percent to appropriately compensate for imperfect dispatch and various operating costs; and the CONE, PNM discount factor, and PNM trigger should be revised on a regular basis, using updated calculations published by an independent third party.

STEC advocated a Zonal PNM implementation option to account for regional differences such as the Valley import constraint that was active in February 2011. Alternatively, STEC recommended a PNM that is based on an ERCOT-wide load-weighted settlement point price rather than the currently used ERCOT-wide hub

average price methodology. STEC recommended the PNM trigger amount be set equivalent to the CONE.

Direct Energy supported an increase in the PNM trigger and the LCAP but does not have a final opinion as to the appropriate level. Similarly, Topaz supported the proposed increases to the LCAP and PNM. Brazos Electric suggested that if Option 4 in the Brattle report (Mandatory Resource Adequacy Requirement for load serving entities (LSEs)) is implemented, penalties for LSEs who fail to meet their resource adequacy mandates should be set above CONE levels in order to maintain alignment of incentives.

With respect to increases in the LCAP amount, Odessa supported the increase in the LCAP value in the proposed rule to $2,000/MWh from the current level of $500/MWh, because it believes that the LCAP value should not be discounted so significantly that generation developers will discount the proposed SWOC. Luminant recommended increasing the LCAP to 50 percent of the HCAP, or $2,250, thereby restoring the original relationship between the LCAP and HCAP. Luminant also suggested excluding load resources from the application of the LCAP so that load resources will not be unnecessarily hindered from continued participation in SCED and may continue to set market clearing prices up to the HCAP based on their own VOLL. NRG supported the proposed increase to $2,000 if the PNM mechanism is maintained by the commission. Arguing that the current LCAP of $500/MWh is too low, Group of Competitive Texas Power Suppliers recommended that it should be set at 50% of the SWOC (the same ratio of LCAP to HCAP that was established in 2007) to ensure that any policy efforts to alter mitigation mechanisms intended to encourage new generation investment are not harmed and the incentive for load to participate as demand response is not inhibited by an LCAP set too low. TCPA recommended that LCAP should be raised significantly above $500 because at the current level, it would collapse prices immediately after the PNM threshold is reached, thereby removing any incentive for load to contract forward, not incent load response, and threaten the economic viability of new investments in the market. Calpine supported the proposed increase in the LCAP from $500 per MWh or per MW per hour to $2,000 and maintaining the LCAP at 50% of the SWOC. According to Calpine, increasing the LCAP to $2,000 accomplishes the policy objective of keeping in place an administrative guardrail against excessive wealth transfer from load to generators for an extended period while continuing the policy of supporting levels of investment that create a resource-adequate system. Topaz contended that any market guardrail, such as the LCAP, deemed necessary by policymakers and intended to protect consumers, should enhance resource adequacy, not deter it.

TIEC recommended maintaining the LCAP and PNM triggers despite their drawbacks if the SWOC is set higher than $4,500, arguing that a SWOC higher than $4,500 would create significant risk of inappropriate wealth transfers from load to generators. TEAM believed that raising the PNM along with the HCAP to ensure that the LCAP will not be triggered as a generator's revenue increases with ever-higher prices to consumers defeats the purpose of the PNM, which was designed as a protective measure for consumers from sustained high prices. TEAM also noted the Battle study's conclusion that increases in HCAP and PNM would not ensure that ERCOT would achieve its resource adequacy target. TEAM suggested that if the annual PNM is increased to reflect a greater earning potential for new peaking generation units, a short-term mechanism should be put into place to limit windfall profits by generators during periods of high demand due to extreme weather events or similar conditions so that consumers can be protected from sustained high prices in such conditions.

With respect to the length of time over which the PNM trigger amount should be considered before the SWOC is reset to the LCAP, Pro-Star advocated a multi-year period rather than a single year approach, because adopting a longer term approach would minimize the impact of weather anomalies and provide a positive climate for generation investment. TCPA made a similar recommendation. Odessa recommended a three-year time period while NRG Energy recommended a 12-month or multi-year rolling calculation as a basis for the triggering event for imposition of the LCAP. Topaz suggested that, at a minimum, the PNM trigger mechanism should be based a three-to-five year rolling average, not a single year metric, to smooth generator margins. STEC opined that the trigger causing the SWOC to be reset to LCAP should be based on a rolling 12-month period with the Valley Import constraint. Brazos Electric supported leaving the current 12-month measurement period for the trigger amount intact. Calpine recommended a study to determine whether to adopt a PNM that is accumulated over a period longer than a year, e.g. three years. Odessa and STEC did not support taking the variability in the weather into consideration in determining whether the PNM trigger is met. Arguing that it would introduce great complexity to the process of determining whether the PNM trigger is met, STEC suggested that the use of the 12-month rolling average sufficiently addresses the issue.

While not directly addressing Question 2, Panda expressed support for the proposed amendments and The Lone Star Chapter of Sierra Club suggested that if the commission decides to make any changes to PNM, those changes should not be made until 2014. LCRA did not propose particular levels for the SWOC or PNM and instead recommended a cautious approach that will allow the Commissioners and market participants to observe the results of Project Number 37897. On the other hand, Public Citizen, City of Houston, Tenaska, and SEED opposed the implementation of the proposed rule.

Commission Response

The commission concludes that the PNM and LCAP should be kept and increases the PNM amount to $300/kW-year and raises the LCAP to the amount recommended in the proposal. Sustained high prices, or the potential for sustained high prices, are intended to serve as a signal that more resources are needed in ERCOT. The PNM threshold and LCAP together seek to balance two competing concerns: providing the opportunity for sufficient revenues to generation and load resources to cover their costs and earn a reasonable return and protecting loads from excessively high prices during periods of low reserve margins. The PNM measures the revenues of a hypothetical peaking unit. If the PNM revenue amount is met, then the system-wide offer cap is reduced from the HCAP to the LCAP. The Brattle Report notes that the PNM threshold amount should be set at a multiple of the CONE of a new peaking plant. The CONE is seen as the average amount of revenue that is needed over many years to attract new investments and is considered along with the frequency and magnitude of price spikes. If there is scarcity and the PNM is met only once in a number of years, then the PNM should be set at a level to take into account the years when the CONE is not met.

The ERCOT Independent Market Monitor (IMM) estimates that the CONE was met in three of the past seven years (2005, 2008, and 2011), although the total revenues were below the PNM threshold. The Brattle Report stressed that there is no correct level for the PNM threshold; however, the Brattle

Report ultimately recommends a PNM threshold in the range of $250-$350/kW-year that increases in some predictable way over time, commensurate with the increasing cost of construction. Consistent with this recommendation, the amended PNM threshold amount of $300/kW-year is within the range recommended by the Brattle Report. This PNM threshold amount would allow recovery of approximately three times the annualized fixed costs of a new gas-fired peaking unit, determined to be in the $80-$105/kW-year range in the IMM's 2011 State of the Market Report.

Furthermore, the commission concludes that the PNM should be increased periodically to reflect any increases in costs of construction. The Brattle Report recommends the PNM threshold be annually increased according to a standard index such as Handy-Whitman Index of Public Utility Construction Costs. The commission agrees that adjusting the PNM threshold annually to reflect any changes in the costs of construction is appropriate because increasing the PNM threshold in a predicable manner would send a positive signal to investors in the generation community. The commission directs ERCOT to annually determine the CONE and each year set the PNM at three times this amount, and amends the rule language accordingly. The LCAP should be set at a level that limits excessive generator revenue in scarcity years, but also at a high enough level to allow a generator to recover fixed costs during a period when the reserve margin is thin and the PNM trigger has been reached.

The Brattle Report recommends that the LCAP be set at an amount over the current level of $500 if generation resources have a marginal cost higher than the LCAP and to ensure that demand response in the form of load reductions would be achieved before the LCAP amount is reached. The commission believes that the LCAP as proposed is set at an amount that would allow for the recovery of marginal costs and for loads to respond to the price. The commission does not see sufficient justification in the comments to change the annual calendar year resource adequacy cycle. The commission agrees with Odessa and STEC that variability in weather should not be taken into account because it introduces greater complexity in the process of determining whether the PNM trigger is met. Furthermore, by setting the PNM to allow recovery of three times the CONE, the commission has adequately addressed the impact of weather anomalies on scarcity pricing over time and consequently, the returns needed to attract investment. Taken as a whole, the amended PNM and LCAP provide generators with a reasonable opportunity to earn a reasonable return on their investments while protecting loads from excessively high prices.

3. How long would it take market participants to adjust their financial exposure to the proposed amendments? Will these changes affect liquidity in the ERCOT market? Will financial counterparties in hedging arrangements continue to be willing to participate, and if so, at what cost, if the HCAP is increased significantly? Would there be any difference if changes were made over a shorter or longer period of time?

TEAM, Topaz, TCPA, and Calpine stated that higher caps will cause the cost of credit to rise. They urged the commission to be mindful of this when making its decision. Brazos and TCPA added that with higher price caps the liquidity will also decrease. TEAM commented that increased market volatility at the wholesale level will increase costs on REPs and other LSEs whether they ever purchase in the day-ahead or real time markets or hedge for all intervals where there is any likelihood of scarcity, as the risk premiums associated with such hedges will increase along with the magnitude of shortage pricing. TEAM stated that generators will also be exposed to significant risk in a volatile market and the costs of being unable to provide power as scheduled will escalate. TEAM asserted that all of these increased costs will necessitate an increase in retail prices and therefore it might be prudent to wait until advanced metering systems (AMS) are fully deployed with functions adequate for effective demand response. Calpine stated that different classes of market participants will be affected differently by the consequences of the increased credit requirements. CES expressed concern about the lack of information on the likely price impacts of the proposal and did not understand the impact to existing contracts or the appropriate steps to mitigate risks. CES was also concerned that the proposed changes may negatively impact the credit or collateral obligations of some retailers.

TEAM stated that hedging arrangements will demand a higher avoidance premium. CES, TEAM, CPS, and TIEC asked the commission to allow the increase to gradually take effect as contracts expire. CES recommended that the commission delay the effective dated to at least 2015 to reduce the impact on existing contracts. TIEC advocated for at least one year after the decision and TEAM stated that two-year contracts were not unusual and the commission should allow two years to transition after making its decision. TIEC stated that for industrial customers whose energy costs may account for up to 70% of production costs, renegotiating a retail supply agreement can be a time consuming and resource intensive process. CPS Energy recommended the commission consider moderate steps upward as this would allow a more orderly adjustment and would allow insurance-type products to catch up but stated that it understands that the commission must weigh that delay against the immediacy of the need for change from the resource adequacy perspective. IPR-GDF SUEZ agreed that the commission should raise the HCAP in graduated steps to limit inordinate risks. Direct Energy and Exelon agreed that the most important aspect is regulatory certainty. Exelon stated that if the threat of state-backed generation lingers, that could thwart liquidity. Direct Energy stated that if the ERCOT market knows the regulatory environment with certainty, then liquidity will likely follow.

LCRA was concerned that the increased price volatility due to increased offer caps may impact generators' credit exposure. Higher prices and increased exposure could increase ERCOT credit utilization and the potential for market participants to exhaust their credit capacity, resulting in the need to secure additional credit, resulting in additional costs. LCRA is also concerned that resources may consider it too risky to participate in the Day Ahead Market or ask for a high premium to compensate for the risk of experiencing a forced outage that would expose them to high real-time prices.

Luminant stated that if the commission maintains the $4,500 HCAP while continuing to explore other market design improvements (including a potential future HCAP above $4,500) the additional costs should not be unreasonable and market participants should be able to adjust without disruptive regulatory accommodations. NRG stated that the more financial resources a market participant must keep in reserve to meet the potential collateral outlay that can result from higher offer caps, the less these entities have for other business initiatives such as making investments in new resources because entities will have less working capital because that capital will be tied up at ERCOT. NRG opined that ERCOT is currently over collateralizing and any increase of the HCAP above $4,500 should be contin-

gent on modification of the credit requirements to prevent undue impact on market liquidity.

NRG suggested looking at portfolio level risks instead of transactional risks and proposed that credit policies be forward looking rather than based on historic prices. IPR-GDF SUEZ argued that the HCAP should be increased and the ERCOT credit requirements should be reduced. IPR-GDF SUEZ argued that the credit support requirements should be adjusted (1) to allow market participants to choose whether to settle bilateral transactions in either the day-ahead or real-time market; (2) to allow cross-affiliate netting of positions and exposures; (3) to avoid a double dip effect of requiring credit support for amounts higher than actual average clearing prices for day-ahead bidding plus collateralization for 40 days of future extrapolated real-time exposure based on a worst-case 60-day look-back; (4) to make a bank's credit rating part of the selection and acceptance process rather than part of the standardized non-negotiable letter of credit language; and (5) to create certainty and predictability in the credit support process so that market participants can calculate their own forecasted exposures rather than having several items subject to ERCOT discretion. Cities disagreed and stated that these arguments are the equivalent of seeking to have one's cake and eat it too. A market with a higher HCAP is a more volatile market capable of producing higher price spikes. Having advocated for a riskier market environment, these parties would then seek to expose the market to a greater credit risk. Cities stated that they were not averse to continuing to evaluate credit standards at ERCOT, but urge the commission to keep in mind the relationship between risk and ERCOT collateral requirements. If the commission believes that an HCAP of $9,000 per MWh would expose market participants to credit requirements that are too burdensome, Cities suggested that is an argument against raising the HCAP not an argument for weakening those credit requirements.

DC Energy felt the impact on market liquidity from a change to the HCAP could be mitigated by (1) ensuring that market participants have adequate time to adjust to the new costs and risks in the market; (2) adhering to an approved schedule for the HCAP increases; (3) continuing to enhance price formation during reliability interventions; and (4) developing more efficient credit requirements in the ERCOT markets.

Commission Response

The commission believes that market participants will be able to accommodate the credit issues resulting from the rule amendments without undue effects on liquidity. The rule amendments delay the implementation of the first step of the SWOC and PNM trigger increases until June 1, 2013 and implement the subsequent increases in a scheduled manner over the subsequent two years. As a result, the rule provides market participants and ERCOT with sufficient time to make appropriate adjustments to contracts, the ERCOT protocols, and resource planning and acquisition before the increases are implemented. Although the increases will increase credit requirements for LSEs and make hedging more challenging, these downsides of implementing the rule amendments are outweighed by the need to further support resource adequacy in ERCOT in an economically efficient way.

4. Should the HCAP ultimately go to $12,000 or $15,000, and if so, over what time period? If the HCAP is raised to these levels, should the energy from the various ancillary services deployed by ERCOT be priced at the same amount, should there be a slope for the prices for these services, or should ERCOT procure different amounts of these services?

TIEC, STEC, Direct Energy, TEAM, Topaz, Brazos, Exelon, TCPA, Luminant, Cities, CPS, Odessa, and Pro-Star were all opposed to increasing the HCAP beyond $9,000 per MWh. STEC did not believe such high prices could be justified. TIEC added that there was no empirical data to support the $9,000 VOLL cap, much less these higher numbers. Direct Energy, Topaz, Brazos, Exelon, and Cities opposed the increases, as a very large increase poses significant credit risks for market participants and will have an adverse effect on investment. Luminant supported an approach that avoids these risks by smoothing out the recovery of generator revenues with less volatility. CPS saw little advantage in moving the HCAP beyond $4,500 but believed that a demand curve to administratively set the price as high as $9,000, or to allow demand to set the price up to this amount, is needed.

Panda supported the commission's efforts to raise the HCAP and suggested that at a minimum it should be set at $9,000 per MWh. DC Energy stated that the proposed increases to the HCAP along with enabling demand response resources to participate in SCED, and addressing the price suppression issues as outlined in the Brattle report, would be an appropriate starting point. DC Energy further stated that moving to an HCAP beyond $9,000 per MWh might be necessary in the future but it seems prudent to implement the proposed cap now and then review the market outcomes before moving to higher levels.

In response to whether the energy from ancillary services deployed by ERCOT should be priced at the same amount, Odessa responded that operating reserves should receive the same compensation as units that are producing energy and the deployment of ancillary services should have minimal if any impact on energy prices. Brazos recommended that the Brattle report's market enhancements 5, 6, and 7 should be addressed by ERCOT to improve price signals to generators and to develop demand response that can respond to high prices. Exelon stated that if energy from ancillary services and also the power balance penalty curve do not rise in tandem with the HCAP, there is risk of price suppression when reserves deploy.

Exelon stated that increasing the HCAP increases the costs of doing business: as hedging costs increase, liquidity decreases. Exelon stated that this is true whether the HCAP rises over time or all at once.

Commission Response

The commission agrees with TIEC, STEC, Direct Energy, TEAM, Topaz, Exelon, TCPA, Luminant, Oncor Cities, CPS, Odessa, and Pro-Star that the cap should not be raised higher than $9,000 at this time. The commission recently raised the HCAP from $3,000 to $4,500, and the amendments that the commission is adopting at this time raise the HCAP over the next three years to $9,000. According to the Brattle report, increasing the HCAP above $9,000 would provide diminishing returns, as the higher the increase to the HCAP, the less additional investment is expected. Although the commission currently has no intention to raise the HCAP above $9,000, the commission is considering other steps to further support resource adequacy in Project Number 40000, *Commission Proceeding to Ensure Resource Adequacy in Texas.* If the HCAP is raised to the proposed levels, the various ancillary services deployment, slope of the prices and procurement process will be determined in partnership with ERCOT, stake holders and commission staff. The commission agrees that there should not be price suppression with the deployment of ancillary services.

All comments, including any not specifically referenced herein, were fully considered by the commission.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, discriminatory, predatory, or anticompetitive, PURA §39.001, which establishes the Legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry, §39.101, which establishes that customers are entitled to safe, reliable, and reasonably priced electricity, and gives the commission the authority to adopt and enforce rules to carry out these provisions; §39.151, which grants the commission oversight and review authority over independent organizations such as ERCOT.

Cross Reference to Statutes: PURA §§14.002, 35.004, 39.101, 39.151, and 39.151.

§25.505. Resource Adequacy in the Electric Reliability Council of Texas Power Region.

(a) General. The purpose of this section is to prescribe mechanisms that the Electric Reliability Council of Texas (ERCOT) shall establish to provide for resource adequacy in the energy-only market design that applies to the ERCOT power region. The mechanisms are intended to encourage market participants to build and maintain a mix of resources that sustain adequate supply of electric service in the ERCOT power region, and to encourage market participants to take advantage of practices such as hedging, long-term contracting between market participants that supply power and market participants that serve load, and price responsiveness by end-use customers.

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

(1) Generation entity--an entity that owns or controls a generation resource.

(2) Event trigger--a calculated value for each interval that is equal to 50 times the Houston Ship Channel natural gas price index for each operating day, expressed in dollars per megawatt-hour (MWh) or dollars per megawatt per hour (MW/h). The event trigger shall be applied solely for the purpose of establishing the timing of the publication of certain market data and shall not be construed to establish the legitimacy of any offer, whether such offer is less than, equal to, or higher than the event trigger.

(3) Load entity--an entity that owns or controls a load resource, including, but not limited to, a load acting as a resource (LaaR) or a balancing up load (BUL), as those terms are defined in the ERCOT Protocols.

(4) Resource entity--an entity that is a generation entity or a load entity.

(c) Statement of opportunities (SOO). ERCOT shall publish a SOO that provides market participants with a projection of the capability of existing and planned electric generation resources, load resources, and transmission facilities to reliably meet ERCOT's projected needs. A SOO published in even-numbered years shall use a ten-year study horizon and be published by December 31 of those years. A SOO published in odd-numbered years shall use a five-year study horizon and be published on or around October 1 of those years. ERCOT shall prescribe reporting requirements for generation entities and transmission service providers (TSPs) to report to ERCOT their plans for adding new facilities, upgrading existing facilities, and mothballing or retiring existing facilities. ERCOT also shall prescribe reporting requirements for load entities to report to ERCOT their plans for adding new load resources or retiring existing load resources.

(d) Projected assessment of system adequacy (PASA). Beginning no later than October 1, 2006, unless otherwise specified below, ERCOT shall provide market participants with information to assess the adequacy of resources and transmission facilities to meet projected demand in the following two reports:

(1) Each month, ERCOT shall publish a Medium-Term PASA for each week of the subsequent three years beginning with the week after the Medium-Term PASA is published. At a minimum, each Medium-Term PASA shall include the following information:

(A) Load forecast by ERCOT zone or area;

(B) Ancillary service requirements;

(C) Transmission constraints; and

(D) Aggregated information on the availability of resources, by ERCOT zone or area, including load resources.

(2) Each day, ERCOT shall publish a Short-Term PASA for each hour for the seven days beginning with the day the Short-Term PASA is published.

(A) At a minimum, each Short-Term PASA shall include the following information:

(i) Load forecast by ERCOT zone or area;

(ii) Ancillary service requirements;

(iii) Transmission constraints; and

(iv) Aggregated information on the availability of resources, by ERCOT zone or area, including load resources.

(B) By October 1, 2006, ERCOT shall file at the commission a plan to incorporate the impact of transmission constraints into its Short-Term PASA at a later date.

(e) Filing of resource and transmission information with ERCOT. ERCOT shall prescribe reporting requirements for resource entities and TSPs for the preparation of PASAs. At a minimum, the following information shall be reported to ERCOT:

(1) TSPs shall provide ERCOT with information on planned and existing transmission outages.

(2) Generation entities shall provide ERCOT with information on planned and existing generation outages.

(3) Load entities shall provide ERCOT with information on planned and existing availability of LaaRs, specified by type of ancillary service, and BULs.

(4) Generation entities shall provide ERCOT with a complete list of generation resource availability and performance capabilities, including, but not limited to:

(A) the net dependable capability of generation resources;

(B) projected output of non-dispatchable resources such as wind turbines, run-of-the-river hydro, and solar power; and

(C) output limitations on generation resources that result from fuel or environmental restrictions.

(5) Load serving entities (LSEs) shall provide ERCOT with complete information on load response capabilities that are self-arranged or pursuant to bilateral agreements between LSEs and their customers.

(f) Publication of resource and load information in ERCOT markets. To increase the transparency of the ERCOT-administered markets, ERCOT shall post at a publicly accessible location on its website, beginning no later than October 1, 2006, the information required pursuant to this subsection, unless a different date is specified by a paragraph of this subsection.

(1) The following information in aggregated form, for each settlement interval and for each area where available, shall be posted two calendar days after the day for which the information is accumulated.

(A) Quantities and prices of offers for energy and each type of ancillary capacity service, in the form of supply curves.

(B) Self-arranged energy and ancillary capacity services, for each type of service.

(C) Actual resource output.

(D) Load and resource output for all entities that dynamically schedule their resources.

(E) During the operation of the market under a zonal market design, scheduled load and actual load. During the operation of the market under a nodal market design, firm scheduled load, scheduled load with "up to" limits on congestion charges, and actual load.

(2) During the operation of the market under a nodal market design, the following day-ahead market information in aggregate form shall be posted two calendar days after the day for which the information is accumulated: load bids, including virtual loads, in the form of day-ahead bid curves, and cleared load.

(3) The following information in entity-specific form, for each settlement interval, shall be posted as specified in subparagraphs (A) - (E) of this paragraph.

(A) During the operation of the market under a zonal market design:

(i) Portfolio offer curves for balancing energy and for each type of ancillary service, for each area where available, shall be posted 60 days after the day for which the information is accumulated beginning September 1, 2007, except that, for the highest-priced offer selected or dispatched by ERCOT for each interval after January 12, 2007, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated. In the event of interzonal congestion, ERCOT shall post, separately for each zone, the offer price and the name of the entity submitting the highest-priced offer selected or dispatched.

(ii) If the market clearing price for energy (MCPE) or the market clearing price for capacity (MCPC) exceeds the event trigger during any interval, the portion of every market participant's price-quantity offer pair for balancing energy service and each other ancillary service that is at or above the event trigger for that service and that interval shall be posted seven (7) days after the day for which the offer is submitted. ERCOT shall implement the requirements of this clause by September 1, 2007.

(iii) Other offer-specific information for each type of service and for each area where available shall be posted 90 days after the day for which the information is accumulated beginning March 1, 2007. Effective March 1, 2008, this information shall be posted 60 days after the day the information was accumulated. The information subject to this disclosure requirement is as follows:

(I) final energy schedules for each QSE;

(II) final ancillary services schedules for each QSE;

(III) resource plans for each QSE representing a resource;

(IV) actual output from each resource; and

(V) all dispatch instructions from ERCOT for balancing energy and ancillary services.

(iv) The information posted shall include the names of the resources in the portfolio that were committed, the name of the entity submitting the information, the name of the entity controlling each resource in the portfolio.

(B) Two months after the start of operation of the market under a nodal market design:

(i) Offer curves (prices and quantities) for each type of ancillary service and for energy at each settlement point in the real time market, shall be posted 60 days after the day for which the information is accumulated except that, for the highest-priced offer selected or dispatched for each interval on an ERCOT-wide basis, ERCOT shall post the offer price and the name of the entity submitting the offer 48 hours after the day for which the information is accumulated.

(ii) If the MCPE or the MCPC exceeds the event trigger during any interval, the portion of every market participant's price-quantity offer pairs for balancing energy service and each other ancillary service that is at or above the event trigger for that service and that interval shall be posted seven (7) days after the day for which the offer is submitted.

(iii) Other resource-specific information, as well as self-arranged energy and ancillary capacity services, and actual resource output, for each type of service and for each resource at each settlement point shall be posted 60 days after the day for which the information is accumulated.

(iv) The posted information shall be linked to the name of the resource (or identified as a virtual offer), the name of the entity submitting the information, and the name of the entity controlling the resource. If there are multiple offers for the resource, ERCOT shall post the specified information for each offer for the resource, including the name of the entity submitting the offer and the name of the entity controlling the resource.

(C) The load and generation resource output for each zone, for each entity that dynamically schedules its resources, shall be posted 90 days after the day for which the information is accumulated beginning March 1, 2007. Effective March 1, 2008, the information required by this subparagraph shall be posted 60 days after the day for which the information is accumulated.

(D) ERCOT shall use §25.502(d) of this title (relating to Pricing Safeguards in Markets Operated by the Electric Reliability Council of Texas) as a basis for determining the control of a resource and shall include this information in its market operations data system.

(E) After the start of operation of the market under a nodal market design, ERCOT shall begin posting transmission flows, voltages, transformer flows, voltages and tap positions (i.e., State Estimator data) 60 days after the day for which the data were accumulated or other time interval as established in clause (ii) of this subparagraph.

The data released shall be made available simultaneously to all market participants.

(i) Notwithstanding the provisions of this subparagraph and the provisions of subparagraph (B) of this paragraph, ERCOT, in its sole discretion, shall release relevant State Estimator data earlier than 60 days after the day for which the information is accumulated if it determines the release is necessary to provide a complete and timely explanation and analysis of unexpected market operations and results or system events, including but not limited to pricing anomalies, recurring transmission congestion, and system disturbances. ERCOT's release of data under this clause shall be limited to intervals associated with the unexpected market or system event as determined by ERCOT. The data released shall be made available simultaneously to all market participants.

(ii) Notwithstanding the provisions of this subparagraph and the other provisions of subparagraph (B) of this paragraph, ERCOT shall, by the start of the nodal market, develop and post a redacted version of State Estimator data, as soon as reasonably practicable after collection of the data, so long as a redacted version excludes information (including but not limited to, voltages, transmission flows and transformer flows) from which resource-specific output levels or offer curves could continually and systematically be derived. Concurrently, in conjunction with the Independent Market Monitor and the commission Staff, ERCOT, through its stakeholder process, shall develop protocols that detail, at a minimum, the methodology, duration, and posting requirement of a redacted version of the State Estimator data. The redacted report methodology developed through the stakeholder process shall be completed within 90 days of the start of the nodal market. If ERCOT is unable to develop a cost effective protocol for the redaction process of the State Estimator data within 90 days of the start of the nodal market, then the following information shall be released as soon as reasonably practicable:

(I) Current commercially significant constraints (CSCs) and closely related elements (CREs) line flows that are embodied in the competitive constraint list from the Competitive Constraint Test;

(II) For phase shifting transformers, tap positions and line flows;

(III) Voltages at all buses;

(IV) Line flows on lines that make up interfaces (import, export, flow gate, or stability); and

(V) Line flows on DC ties.

(iii) In no event shall ERCOT disclose competitively sensitive consumption data.

(g) Scarcity pricing mechanism (SPM). ERCOT shall administer the SPM. The SPM shall operate as follows:

(1) The SPM shall operate on an annual resource adequacy cycle, starting on January 1 and ending on December 31 of each year.

(2) For each day of the annual resource adequacy cycle, the peaking operating cost (POC) shall be 10 times the daily Houston Ship Channel gas price index for the previous business day. The POC is calculated in dollars per megawatt-hour (MWh).

(3) For the purpose of this section, the real-time energy price (RTEP) shall be measured as the price at an ERCOT-calculated ERCOT-wide hub.

(4) In the annual resource adequacy cycle, the peaker net margin (PNM) shall be calculated as:
Figure: 16 TAC §25.505(g)(4) (No change.)

(5) Each day ERCOT shall post at a publicly accessible location on its website the updated value of the PNM, in dollars per megawatt (MW).

(6) The system-wide offer caps shall be as follows:

(A) The low system-wide offer cap (LCAP) shall be set on a daily basis at the higher of:

(i) $2,000 per MWh and $2,000 per MW per hour; or

(ii) 50 times the daily Houston Ship Channel gas price index of the previous business day, expressed in dollars per MWh and dollars per MW per hour.

(B) The high system-wide offer cap (HCAP) shall be set:

(i) Beginning on June 1, 2013 at $5,000 per MWh and $5,000 per MW per hour.

(ii) Beginning on June 1, 2014 at $7,000 per MWh and $7,000 per MW per hour.

(iii) Beginning on June 1, 2015 at $9,000 per MWh and $9,000 per MW per hour.

(C) At the beginning of the annual resource adequacy cycle, the system-wide offer cap shall be set equal to the HCAP and, except for increases authorized in this section, maintained at this level as long as the PNM during an annual resource adequacy cycle is less than or equal to a threshold of $300,000 per MW in 2012 and 2013, or the threshold set by ERCOT for a subsequent year. For 2014 and each subsequent year, ERCOT shall set the PNM threshold at three times the cost of new entry of new generation plants. During an annual resource adequacy cycle, the system-wide offer cap shall be increased in accordance with the schedule authorized in this section unless the PNM threshold has been exceeded by that date. If the PNM threshold has been exceeded during an annual resource adequacy schedule, the system-wide offer cap shall be reset at the LCAP for the remainder of that annual resource adequacy cycle.

(D) The Independent Market Monitor, as part of its responsibilities pursuant to Public Utility Regulatory Act §39.1515(h), may conduct an annual review of the effectiveness of the SPM.

(h) Development and implementation. ERCOT shall use a stakeholder process to develop protocols that comply with this section. Nothing in this section prevents the commission from taking actions necessary to protect the public interest, including actions that are otherwise inconsistent with the other provisions in this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205551
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 15, 2012
Proposal publication date: April 27, 2012
For further information, please call: (512) 936-7223

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PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.1

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §31.1, relating to Separation of Duties Between Commission and Administrator, without changes to the proposed text as published in the July 20, 2012, issue of the *Texas Register* (37 TexReg 5401). The rule will not be republished.

The section defines the relationship of the office of the general counsel to the commission and the administrator. To assure that it exercises its policy-making responsibilities in the best manner, the commission believes that the general counsel, as the attorney responsible for rendering legal advice to the commission, should report directly to the commission. At the same time, the commission recognizes that the effective implementation of the commission's policies requires the general counsel and the administrator to coordinate all of the agency's resources. The amendments specify that: the commission retains the duty and authority to employ and terminate the general counsel; the general counsel reports directly to the commission; and the administrator has the duty and authority to assign and delegate responsibilities and authority to the general counsel as well as the executive management team, in order to effectively administer agency operations, duties and functions, to implement policy and to manage staff and resources.

No comments were received.

The amendments are adopted under Alcoholic Beverage Code §5.12, which provides that the commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes and shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the administrator and the staff of the commission, by Alcoholic Beverage Code §5.34(b), which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff, and by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205553
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: November 15, 2012
Proposal publication date: July 20, 2012
For further information, please call: (512) 206-3443

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CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.21

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §33.21, When Excise Tax Bonds Are Necessary, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4489). The rule will not be republished.

The commission amends the section to reflect current practices regarding permit bonds and to remove a regulatory burden on permittees and licensees regarding excise tax bonds. In addition, references to performance bonds are deleted from this section. The section is re-titled to reflect its new focus.

The amendment deletes reference in current subsection (a) to "permit bonds". Amendments to subsections (c) and (d) no longer require permit bonds of all applicants and no longer require excise tax bonds of all permittees and licensees subject to such taxes. However, excise tax bonds are still required where a permittee or licensee fails to make a timely excise tax payment, if the required payment was in the amount of $500 or more. An amendment to subsection (e) eliminates an excise tax bond requirement for certain nonresident manufacturers who are not responsible for payment of the excise tax itself.

No comments were received.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §204.07, which authorizes the commission to promulgate a rule determining that certain bonds are no longer necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205554
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: November 15, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 206-3443

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16 TAC §33.22

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §33.22, Excise Tax Bonds, relating to excise tax bond requirements, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4491). The rule will not be republished.

Section 33.22 is amended to address bonds required in connection with all excise taxes and to implement its determination in §33.21 that excise tax bonds are only necessary in certain circumstances. The amendments also update references to financial instruments and institutions. The amendments clarify that bonds in place on the effective date of the amendment shall remain in place for the length of time specified on the bond. The

section is re-titled to clarify its applicability. The amendments also remove the requirement in subsection (a) that brewpubs furnish an excise tax bond.

No comments were received.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205555
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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Proposal publication date: June 22, 2012
For further information, please call: (512) 206-3443

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16 TAC §33.24

The Texas Alcoholic Beverage Commission adopts amendments to §33.24, concerning Conduct Surety Bond, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4492). The rule will not be republished.

The amendments combine the provisions relating to conduct surety bonds and performance bonds and clarify which requirements and procedures apply to each type of bond. The amendments re-title the section to indicate its broadened applicability.

No comments were received regarding the proposal.

The amendments are adopted under Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3443

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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.42

The Texas Alcoholic Beverage Commission adopts amendments to §41.42, concerning Bonds, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4494). The rule will not be republished.

The amendments combine all excise taxes into this section and set a uniform minimum bond requirement of $1,000. The amendments also clarify language and re-title the section to reflect its applicability.

No comments were received regarding the proposal.

The amendments are adopted under Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205552
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: November 15, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 206-3443

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16 TAC §41.46

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §41.46, concerning Beer--in General, without changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4495). The rule will not be republished.

Section 41.42 of the commission's rules has been amended to cover excise taxes on beer as well as liquor. The amendments to §41.46 removes subsection (g), which formerly covered the excise tax on beer.

No comments were received regarding the proposal.

The amendments are adopted under Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205563
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: November 15, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 206-3443

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CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.113

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.113, concerning Gifts, Services and Sales, without changes to the proposed text as published in the May 25, 2012, issue of the *Texas Register* (37 TexReg 3776). The rule will not be republished.

In *Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission,* A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Texas Alcoholic Beverage Code (Code) and the rules of the commission were found to be violations of the First Amendment. Although §45.113 was not specifically litigated and therefore was not specifically addressed in the court's Order, the Order and Judgment enjoin the commission from enforcing "any other provision of Texas law" that is inconsistent with the court's opinion. In light of that provision of the Order, this section is amended to conform to the court's decision.

Prior to this amendment, §45.113(b)(3) allowed manufacturers and distributors to purchase *beer* for consumers for consumption at a licensed retail premises in the presence of the purchaser. However, the rule provided that such purchases could not be excessive, prearranged or preannounced. This section implements §102.15 of the Code, which generally prohibits a manufacturer or distributor from giving anything of value to a beer retailer. By preannouncing (i.e., advertising) a beer purchase promotion at a specific retail location, the upper tier member is clearly benefitting the retailer.

However, §102.07(g) of the Code allows a brewer, distiller, rectifier, wholesaler, class B wholesaler, winery or wine bottler to prearrange and preannounce promotional activities, and 16 TAC §45.117(b)(3) specifically allows all of them to purchase *distilled spirits* or *wine* for consumers if they are consumed at a licensed retail premises in the presence of the purchaser. Indeed, brewers may also prearrange and preannounce purchases of *ale/malt liquor.* 16 TAC §45.117(b)(3) provides only that such purchases may not be excessive. By preannouncing a distilled spirits, wine or ale purchase promotion at a specific retail location, the upper tier member is clearly benefitting the retailer. Were it not for the specific grant of authority in §102.07(g) of the Code, providing this thing of value to the retailer would clearly violate the general prohibition from doing so that is found in §102.07(a)(2) of the Code.

Regardless of whether the promotional activity itself is providing a thing of value to the retailer, §108.04 of the Code allows the commission to relax that restriction in certain circumstances and the commission did so by adopting 16 TAC §45.113 and §45.117 to allow "bar spending" (i.e., the purchase of alcoholic beverages at the retail level by a member of the manufacturing or wholesale level). Since the underlying promotional activity itself is legal, the question becomes whether advertising it is lawful.

As the Court noted in *Authentic Beverages,* starting with the proposition that advertising is generally allowable as a protected form of commercial speech, in order to justify restricting that speech the state must: articulate a substantial government interest; demonstrate the regulations directly advance that interest; and show the regulations are not more extensive than necessary to advance the interest. Although the advertisement itself may indeed provide something of value to the retailer and thus be in violation of state law, that state law, albeit supported by the 21st Amendment to the U.S. Constitution, must yield to the dictates of the 1st Amendment to the U.S. Constitution. Indeed, the Court in *Authentic Beverages* held that despite the fact that an advertisement by a brewer stating where its product is being sold undoubtedly provides something of value to the retailer whose location is being advertised, the brewer is allowed to engage in such advertising.

In this case, the §45.113(b)(3) restriction on preannouncement and prearrangement of *beer* purchases by manufacturers is difficult to constitutionally justify in light of the ability of brewers (who often also hold manufacturer licenses) to preannounce and prearrange their *ale/malt liquor* purchases. Furthermore, it is difficult to constitutionally justify why a distributor's advertising of such a promotion is "providing a thing of value" in violation of the Code if a *brewer's or manufacturer's* advertising of a similar promotion is not. The commission does not have evidence that the promotional activities regarding distilled spirits, wine and ale/malt liquor that are currently allowed under §102.07(g) of the Code and §45.117(b)(3) have resulted in any harm to the public health and safety or have led to any disturbances in the marketplace.

For these reasons, the commission amends §45.113(b)(3) to remove the restriction on prearranging and preannouncing beer purchase promotions by manufacturers and distributors. The resulting language is essentially identical to the language that applies to liquor purchase promotions in §45.117(b)(3). In neither case is anyone at any level required to engage in such promotions or to prearrange or preannounce them.

The commission received written comments from Anheuser-Busch and the Beer Institute supporting the proposed amendment. Both commenters suggested that the commission also allow preannouncement and prearrangement of beer samplings. The commission will consider this suggestion but it is beyond the scope of the proposed rule and would require republication, which the commission declines to do at this time.

Rick Donley provided oral comments on behalf of the Beer Alliance of Texas at a June 6, 2012 public hearing on the proposed rule. Mr. Donley stated that the proposed rule was appropriate, but cautioned that in implementing it the commission should keep in mind that there is a concern any time an upper tier member expends money to benefit a specific retailer. He stated that nothing in the *Authentic Beverages* decision gave up ground on giving things of value to a retailer. The commission will consider Mr. Donley's statement, but notes that he indicated that the rule was appropriate and did not ask for any specific action regarding adoption of the rule.

The amendment is adopted under Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code; and Texas Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205557

Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Effective date: November 15, 2012
Proposal publication date: May 25, 2012
For further information, please call: (512) 206-3443

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 14. COUNTY INDIGENT HEALTH CARE PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§14.104, 14.105 and 14.201, concerning the County Indigent Health Care Program. The amendments are adopted without changes to the proposed text as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3333) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The department provides technical assistance to counties, hospital districts, and public hospitals that provide health care services to eligible residents who are unable to access the same care through other funding sources or programs in accordance with the Indigent Health Care and Treatment Act, Health and Safety Code, Chapter 61.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by the agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 14.104, 14.105, and 14.201 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. A rule review notice for all sections of Chapter 14 of this title is published in the "Review of Agency Rules Section" in this issue of the *Texas Register.*

Section 14.104 and §14.105 are adopted with amendments pursuant to Senate Bill 420, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, §61.008, requiring provision that by rule a county may include in the income and resources of an applicant for health care services the income and resources of a person who executed an affidavit of support on behalf of the applicant, and the income and resources of the spouse of a person who executed an affidavit of support on behalf of the applicant, if applicable.

Section 14.201 is adopted with amendments in accordance with Health and Safety Code, §61.006(c), to define optional health care services listed in Health and Safety Code, §61.0285, that counties may provide if cost-effective. Health and Safety Code, §61.0285(a), as amended by the 82nd Texas Legislature, 2011, authorizes counties to provide physical and occupational therapy services to eligible residents if determined to be cost-effective.

SECTION-BY-SECTION SUMMARY

Amendments to §14.104 add a new definition of "sponsored alien"; authorize counties to include the income of a person who executed an affidavit of support on behalf of the applicant for health care services and the income of the person's spouse; and require that if a county chooses to include the income of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the incomes of the sponsor and the sponsor's spouse when determining the applicant's eligibility for health care services.

Amendments to §14.105 authorize counties to include the resources of a person who executed an affidavit of support on behalf of the applicant for health care services and the income of the person's spouse; require that if a county chooses to include the resources of a person who has executed an affidavit of support on behalf of an applicant, the county must adopt written procedures for processing the resources of the sponsor and the sponsor's spouse when determining the applicant's eligibility for health care services; and reword subsection (d)(4) and (5) to reflect the addition of new subsection (d)(6).

Amendments to §14.201 add physical and occupational therapy services as optional services counties may provide if found to be cost-efficient. Subsection (b)(13) has been renumbered as subsection (b)(15) with the addition of new subsection (b)(13) and (14).

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER B. DETERMINING ELIGIBILITY

25 TAC §14.104, §14.105

STATUTORY AUTHORITY

The amendments are authorized under the Health and Safety Code, §61.006, which directs the Executive Commissioner of the Health and Human Services Commission to establish minimum eligibility standards and to define optional health care services counties may provide if cost-effective; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2012.

TRD-201205521

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 776-6972

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SUBCHAPTER C. PROVIDING SERVICES

25 TAC §14.201

STATUTORY AUTHORITY

The amendment is authorized under the Health and Safety Code, §61.006, which directs the Executive Commissioner of the Health and Human Services Commission to establish minimum eligibility standards and to define optional health care services counties may provide if cost-effective; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205522
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 13, 2012
Proposal publication date: May 4, 2012
For further information, please call: (512) 776-6972

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

43 TAC §§1.101 - 1.108

The Texas Department of Transportation (department) adopts new Subchapter G, Alternative Dispute Resolution, §§1.101 - 1.108. These rules are adopted concurrently with amendments to §9.1 and new §9.7, concerning contract claims and protests. New §§1.101 - 1.108 are adopted without changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5998) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

Senate Bill 1420, 82nd Legislature, Regular Session, 2011, the department's sunset bill, added Transportation Code, §201.118, which in part contains the Sunset Commission's across-the-board provision that requires the Texas Transportation Commission (commission) to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Government Code, Chapter 2009, to assist in the resolution of internal and external disputes under the department's jurisdiction. The statute requires the department's alternative dispute resolution procedures to conform as much as possible to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by a state agency. Government Code, Chapter 2009, adopts some of the qualifications and requirements of Civil Practice and Remedies Code, Chapter 154, which relates to the alternative dispute resolution procedures used by the courts of this state.

New §1.101, Definitions, provides definitions used within the subchapter.

New §1.102, Policy, states the policy for the subchapter which is to encourage the use, if appropriate, of an alternative dispute resolution process to resolve a dispute under the department's jurisdiction.

New §1.103, Alternative Dispute Resolution Description, provides a general description of an alternative dispute resolution with a listing of the types of processes used.

New §1.104, Impartial Third Party, provides the qualifications and standards for an impartial third party, as required by statute.

New §1.105, Alternative Dispute Resolution Coordinator, requires the executive director of the department to designate an employee as the department's alternative dispute resolution coordinator. The section requires the coordinator to satisfy the statutory requirements for an impartial third party and, therefore, the coordinator is permitted to serve as an impartial third party in an alternative dispute resolution process in which the department is a party if approved by all other parties to the process. Subsection (d) requires the alternative dispute resolution coordinator to develop the process to be used by the department for alternative dispute resolution, including the selection of an impartial third party. The process must conform, to the extent possible, to the model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies, as required by Transportation Code, §201.118(b). In accordance with Transportation Code, §201.118(c), subsection (e) requires the alternative dispute resolution coordinator to collect data on the effectiveness of the department's use of alternative dispute resolution and to report the results to the commission.

New §1.106, Use of Alternative Dispute Resolution, provides that alternative dispute resolution may be used to resolve a dispute relating to the department unless a rule of the commission specifically provides otherwise. The procedure provided under new Subchapter G may not be used for employee disputes, disciplinary actions, grievances, and appeals, contract claims, protests in connection with the solicitation, evaluation, or award of a purchase of commodities or non-professional services under the State Purchasing and General Services Act (Government Code, Title 10, Subtitle D), or requests for the review of decisions that are final or not reviewable under Title 43 of the Texas Administrative Code or for which Title 43 provides an exclusive appeals process. The procedures used for resolving some of

those disputes may provide for the use of alternative dispute resolution, but Subchapter G does not apply to those disputes. For example, under the adopted rule a request for alternative dispute resolution could be made concerning bid protests related to a highway improvement contract or related to a contract for architectural, engineering, or surveying services.

New §1.107, Assessment of the Use of Alternative Dispute Resolution, requires the alternative dispute resolution coordinator to assess whether an alternative dispute resolution process is appropriate for a dispute that is referred to the coordinator for the use of alternative dispute resolution. If appropriate, the coordinator determines the type of process to be used. While the use of alternative dispute resolution is encouraged, it is not appropriate for all disputes. The new section provides some examples of when the use of an alternative dispute resolution process is not appropriate.

New §1.108, Confidentiality of Certain Records and Communications, states that the confidentiality provisions of Civil Practice and Remedies Code, §154.073 apply for an alternative dispute resolution process.

COMMENTS

Comments were received from Gardere Wynne Sewell, LLP (Gardere) in the form of a newsletter.

Comment: Gardere commented that some persons will find it difficult to accept that an employee designated by the executive director to act as the department's dispute resolution coordinator will be impartial. The commenter was concerned, for example, if a coordinator were to appoint herself to act as the impartial third party in a dispute between the department and a private entity.

Response: New §1.105(c) merely authorizes the department's dispute resolution coordinator to act as the impartial third party for an alternative dispute resolution process. As pointed out by the commenter, the rules require that the parties to an alternative dispute resolution proceeding agree upon the appointment of the impartial third party, so the private entity may prevent the coordinator from serving as the impartial third party. The department has made no changes in response to this comment.

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.118, which in part requires the commission to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the department's jurisdiction.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.118.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER A. GENERAL

43 TAC §9.1, §9.7

The Texas Department of Transportation (department) adopts amendments to §9.1 and new §9.7, concerning contract claims and protests. These rules are adopted concurrently with new §§1.101 - 1.108 of this title, concerning alternative dispute resolution. The amendments to §9.1 and new §9.7 are adopted with changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6000).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Texas Administrative Code (TAC), Title 43, §9.2, concerning Contract Claim Procedure, applies to contract claims described by the statutory provisions listed in Transportation Code, §201.112 (generally, aviation contracts, logo signs contracts, highway improvement contracts, and professional or consulting services contracts). Section 9.1, currently titled Claims for Purchase Contracts, applies to contract claims that are subject to Government Code, Chapter 2260; however, the wording of the section may be subject to a more restrictive reading. Section 9.1 is amended to clarify the application of that section, namely that the section applies to the processing of all contract claims except those processed under §9.2.

The procedure for protests of purchases by the department under the State Purchasing and General Services Act (Government Code, Chapters 2151 - 2177) is provided by 43 TAC §9.3. Additionally, 43 TAC §9.154 provides the exclusive procedures for protests related to the procurement of design-build contracts, and 43 TAC §27.6 provides the exclusive procedure for protests related to procurement of comprehensive development agreements. However, protest procedures for other types of contracts (for example, highway improvement contracts, and engineering services contracts) are not currently provided for by rule. New §9.7 provides a general protest process.

Amendments to §9.1 change the section heading to indicate that the section applies to contracts that are subject to Government Code, Chapter 2260. To clarify the types of contracts to which the section applies, the amendments substitute "contract" for the references to "purchase contract" throughout the section and provide a definition of "contract." "Contract" means a written contract for goods or services, but does not include a contract to which §9.2 applies. The rule is changed on adoption to reflect in the definition of "director of contract services" the organizational change of the Contract Services Section in the department's General Services Division to the department's Contract Services Office; the Contract Services Office was created effective September 1, 2012. In the definition of "executive director," the limitation that a person designated to perform the duties assigned to the executive director under the section may not be

below the level of office director is removed. This change allows the executive director more flexibility in designating a department employee who has expertise in contract claims negotiations. The definition of "purchase" is removed because the term is not used in the amended section.

New §9.7, Protest of Contract Practices or Procedures, provides a general protest process that is applicable to the award of a contract for which the rules of the commission do not provide a protest process. The provisions to which this section applies include Chapter 9, Subchapter B, Highway Improvement Contracts, Subchapter C, Contracting for Architectural, Engineering, and Surveying Services, and Subchapter F, Contracts for Scientific, Real Estate Appraisal, Right of Way Acquisition, and Landscape Architectural Services.

New §9.7(b) provides that, for a protest to be valid, it must be received by the executive director no later than six days after the aggrieved person knows, or should have known, of the action for which the protest is filed.

New §9.7(c) provides the items that must be included in the protest.

New §9.7(d) expressly authorizes the executive director to refer the protest for alternative dispute resolution under Title 43, Chapter 1, Subchapter G, Alternative Dispute Resolution; that subchapter is adopted concurrently with the addition of this provision. If the resolution is successful, a written agreement will be produced and any suspension of the award of the contract will be lifted.

New §9.7(e) provides the solicitation or the award of a contract will continue after a protest has been filed unless the executive director or, if the commission is to decide the protest, the commission, determines that the delay will not substantially harm the interests of the department.

Under new §9.7(f), if the protest is not resolved by agreement, the executive director will deliver to the commission a written recommendation for a decision that includes the reasons for the recommendation if the commission is to decide the protest or, if the department decides the protest, the executive director will issue a written decision on the protest that includes reasons for the decision. The recommendation or decision will be that a violation did not occur or that a violation has occurred, but remedial action is unnecessary or remedial action is necessary. Remedial action may include voiding the contract, reversing the contract award, or re-advertising the contract using revised specifications. The executive director will deliver a copy of the recommendation or decision, as appropriate, to the protesting party and interested parties identified in the protest.

New §9.7(g) applies only if the commission decides the protest. The commission may consider, in addition to the executive director's recommendation, oral presentations and written documents presented by the department, protesting party, or interested parties identified in the protest. The commission will adopt its decision by minute order.

New §9.7(h) clarifies that for this section the commission decides a protest if commission rules provide that the commission awards the contract that is the subject of the protest. For example, under current adopted rules the commission awards highway improvement contracts, and so the commission would make the decision on any protest concerning such contracts. The executive director decides the protests on other contracts. Finally, a decision of the commission or executive director is final and the protest may not be the subject of a contested case.

COMMENTS

Comments concerning §9.7 were received from Gardere Wynne Sewell, LLP (Gardere) in the form of a newsletter.

Comment: Gardere commented that the description of a person who may file a protest, a "person who is aggrieved," is not defined. The commenter also noted that for similar federal rules concerning the filing of a protest concerning a solicitation by a federal agency, there is considerable litigation over who has standing to file a protest. See, 4 C.F.R. Part 21.

Response: The purpose of the rule is to establish very basic procedural requirements on how the department will process a protest concerning a procurement for the types of contracts for which the department does not already have a protest procedure. Previously, the department has processed such a protest without rules that are specifically tailored to guide the process for that type of protest. Historically, the only persons who have filed protests are bidders. The department does not anticipate that questions will arise concerning whether a filing party is an aggrieved party and a rule change in response to this comment is not made.

Comment: Gardere commented that the rule has no procedure for "intervention" in the process, for example, by the bidder who was awarded the contract.

Response: While the department acknowledges that the rule only establishes very basic procedural requirements, the department disagrees that the rule has no provisions for how other interested persons may participate in the evaluation of the protest. Under §9.7(c) the protester must submit a statement that it has given copies of the protest to other identifiable interested parties. Subsection (f) of that section requires the executive director to deliver a copy of the executive director's report evaluating the protest to the identifiable interested parties. Subsection (g) of that section provides that if the commission will make the decision on the protest, the commission may consider oral presentations by the department, the protesting party, or interested parties. The department has not made a change to the rule in response to this comment.

Comment: Relating to §9.7(b), Gardere commented that the deadline of six days to submit a protest is terribly short. For purposes of comparison, Gardere pointed out that under federal rules the deadline is ten days.

Response: The department believes the deadline of six days to submit a protest is necessary. For example, the department opens the bids for highway construction and maintenance contracts, which are contracts that are subject to this section, each month at a regularly scheduled bid opening date, and then in the same month asks the commission at its regularly scheduled public meeting to award the contracts. If the commission is to consider any protests concerning such a procurement before it awards the contract, the deadline for submitting protests must be after the opening of the bids, but before the commission may award the contract. At some times during the year this process requires that the deadline be as short as six days.

Comment: Also relating to §9.7(b), Gardere commented that the deadline of six days does not specify whether it is six calendar days or six business days.

Response: The department intends that the deadline is six calendar days and believes the rule is sufficiently clear without making any changes to the rule. Under the rules of statutory construction, which are also generally applicable to the interpretation of agency rules, "day" means calendar day unless the statute or rule provides a different meaning.

Comment: Gardere suggested that the rule should allow for submitting a protest at any time before bid opening or the time set for receipt of initial proposals.

Response: Subsection (b) of §9.7 allows a person who is aggrieved to submit a protest concerning the solicitation, evaluation, or award of a contract. The department believes the rule allows a person who is aggrieved to file a protest as soon as the person desires to do so. The proposed rule sets a period for filing a protest as "within" six days after the aggrieved person knows, or should have known, of the action. The department agrees that the description of the deadline may be made more clear, and so has restated the deadline as "not later than the sixth day after the first day that the aggrieved person knows, or should have known, of the action."

Comment: Gardere pointed out that the provisions on how to file a protest with the executive director were not clear.

Response: The department agrees the rule should be made clear and has therefore added a new paragraph that provides that the person who files a protest must follow the instructions in the solicitation for the contract. If the instructions do not specify how to file a protest, the protest must be filed with the executive director.

Comment: Gardere questioned the provisions in §9.7(e) concerning the solicitation or award of a contract proceeding during the processing of the protest unless the executive director or commission find that delay will not substantially harm the interests of the department. Gardere asserted that a more relevant test is whether the integrity of the purchasing system is at stake. Gardere stated, for example, that is the test by which it is determined whether a federal procurement or award of the resulting contract should continue. See, 31 U.S.C. §3553(c).

Response: The department of course agrees that the integrity of the purchasing system is important, but does not believe that any changes to the rule are needed. The department again states that the purpose of the rule is to establish very basic procedural requirements on how the department will process a protest. Under the rule, the department believes that the contract will not be entered into during the processing of most if not all of the protests. But, if entering into the contract promptly is in fact necessary to carrying out the department's responsibilities, the rule should not prevent that from occurring. This is especially relevant, for example, for highway construction and maintenance contracts because the commission will make the decisions for such a contract under the rule. The commission usually meets only once per month. A rule setting forth very basic procedure should not have the effect of automatically putting on hold the processing of a procurement or contract award until the next commission meeting. The department would note that the cited federal statute sets a very different procedure whereby the Comptroller General reviews the actions of an individual federal agency. In contrast, the department rule provides that one entity, either the executive director or the commission, depending on the type of contract, will make the decisions on the procurement, award of contract, and decision on protest. Therefore, intricate standards of review in the department rule are unnecessary. Finally, under the federal statute, a federal agency may proceed with the award of a contract if it finds that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the resolution of the protest. The department rule similarly focuses on whether delay will cause harm to the interests of the procuring entity.

Comment: Gardere objected to the provisions in §9.7(d) which allow for the referral of the protest for alternative dispute resolution. Gardere believes that a referral for dispute resolution will unduly delay the resolution of the protest.

Response: To further the legislative mandate under Transportation Code, §201.118 requiring the commission to develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures to assist in the resolution of internal and external disputes under the department's jurisdiction, subsection (d) authorizes but does not require the executive director to refer a protest for alternative dispute resolution. The department has made no changes in response to this comment because the department intends to ensure that the use of dispute resolution procedures will not unduly delay the resolution of a protest.

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Title 10, Subtitle D; Chapter 2254, Subchapter A; and Chapter 2260. Transportation Code, Chapter 223, Subchapters A - D.

§9.1. Contract Claims under Government Code, Chapter 2260.

(a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract claims against the state. This section governs the filing, negotiation, and mediation of such a claim.

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

(1) Claim--A claim for breach of a contract between a vendor and the department.

(2) Contract--A written contract, other than a contract specified in §9.2(a)(1) of this subchapter (relating to Contract Claim Procedure), between the department and a vendor for goods or services.

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

(4) Director of contract services--The director of the department's Contract Services Office.

(5) Executive director--The executive director of the department or the director's designee.

(6) Vendor--An individual, partnership, corporation, or other entity that is a party to a contract with the department.

(c) Filing of claim. A vendor may file a notice of claim with the director of contract services within 180 days after the date of the event giving rise to the claim. The claim must contain the:

(1) nature of the alleged breach;

(2) amount the vendor seeks as damages; and

(3) legal theory of recovery.

(d) Negotiation.

(1) The executive director will begin negotiations with the vendor to resolve the claim. The negotiations will begin no later than the 120th day after the date the claim is received.

(2) The negotiation may be written or oral. The executive director may afford the vendor an opportunity for a meeting to informally discuss the disputed matters and provide the vendor an opportunity to present relevant information.

(e) Mediation.

(1) The department and the vendor may agree to nonbinding mediation. The department will agree to mediation if the executive director determines that the mediation may speed resolution of the claim or otherwise benefit the department.

(2) The executive director will appoint a department employee as mediator. The employee must not have had any previous involvement or participation in the administration of the contract or the resolution of the claim.

(3) If the vendor objects to the appointment of a department employee as mediator, the department will select and hire a private mediator from outside the department. The costs for the services of a private mediator will be apportioned equally between the department and the vendor.

(4) The role of a mediator is limited to assisting the parties in attempting to reach an agreed resolution of the issues.

(f) Final offer.

(1) The executive director will make a final offer to the vendor within 90 days of beginning negotiations.

(2) If the disposition is acceptable to the vendor, the vendor shall advise the director of contract services in writing within 20 days of the date of the final offer. The department will forward an agreed disposition involving payment to the vendor for a final and binding order on the claim.

(g) Contested case hearing. If the vendor is dissatisfied with the final offer, or if the claim is not resolved before the 90th day after negotiations begin, the vendor may petition the executive director for an administrative hearing to litigate the unresolved issues in the claim under the provisions of §1.21 et seq. of this title (relating to Procedures in Contested Case).

§9.7. Protest of Contract Practices or Procedures.

(a) Application of section. This section provides a general protest process for the award of a contract for which the rules of the commission do not provide a protest process. For the purpose of the application of this section, a rule that merely provides that a protest, appeal, or other type of request for review may be filed, without establishing any other steps that must be satisfied, does not provide a protest process.

(b) Filing of protest.

(1) A person who is aggrieved in connection with the solicitation, evaluation, or award of a contract to which this section applies may file a written protest. The protest must be received by the executive director not later than the sixth day after the first day that the aggrieved person knows, or should have known, of the action. A protest that is not filed within the six-day period will not be considered.

(2) A protest must be filed in the manner and at the address for submitting protests specified in the solicitation for the contract. If the solicitation does not provide instructions on how to file a protest, a protest must be sent by United States Mail, overnight delivery, or hand delivery, to: Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The time and date of filing the protest is determined by the file stamp affixed by the office of the department that received the protest filed in accordance with this paragraph.

(c) Contents of protest. The protest must contain:

(1) the provision of the statute or rule that the action is alleged to have violated;

(2) a specific description of the alleged violation;

(3) a precise statement of the relevant facts;

(4) the issue to be resolved;

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

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

(d) Informal resolution. The executive director may refer the protest for alternative dispute resolution under Chapter 1, Subchapter G of this title (relating to Alternative Dispute Resolution). If the protest is resolved by agreement:

(1) the agreement will be reduced to writing; and

(2) if the solicitation or the award of the contract has been suspended under subsection (e) of this section, the solicitation or award will resume immediately after the agreement is reached.

(e) Suspension of solicitation or award. If a protest has been filed, the solicitation or the award of the contract will proceed unless the executive director or, if the commission is to decide the protest, the commission, determines that the delay of the solicitation or award of the contract will not substantially harm the interests of the department.

(f) Executive director's recommendation or decision. This subsection applies if the protest is not resolved by agreement. If the commission is to decide the protest, the executive director will deliver to the commission, protesting party, and interested parties identified in the protest a written recommendation for a decision that includes the reasons for the recommendation. If the department, rather than the commission, decides the protest, the executive director will issue a written decision to the protesting party and interested parties identified in the protest that includes reasons for the decision. The executive director may recommend to the commission or may decide, as appropriate, that:

(1) no violation has occurred;

(2) a violation has occurred, but remedial action is unnecessary; or

(3) a violation has occurred and it is necessary to take remedial action that may include:

(A) declaring the contract void;

(B) reversing the award; or

(C) re-advertising the contract using revised specifications.

(g) Commission's decision. If the commission is to decide the protest, in addition to the executive director's recommendation provided under subsection (f) of this section, the commission may consider oral presentations and written documents presented by the department, protesting party, or interested parties. The chair shall set the order and the time allowed for presentations. The commission's decision on the

protest will be adopted by order and may be made part of the order awarding the contract that is the subject of the protest.

(h) Authority to make decision on protest. For the purposes of this section, the commission decides a protest if commission rules provide that the commission awards the contract that is the subject of the protest. The executive director decides the protests on other contracts. A decision of the commission or executive director is final and the protest may not be the subject of a contested case.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 15, 2012
Proposal publication date: August 10, 2012
For further information, please call: (512) 463-8683

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CHAPTER 16. PLANNING AND DEVELOPMENT OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §§16.2, 16.4, 16.51 - 16.55, 16.101 - 16.105, 16.151 - 16.154, 16.156, 16.160, and 16.201 - 16.204 and new §16.106, all concerning planning and development of transportation projects. The amendments to §§16.2, 16.4, 16.51 - 16.55, 16.102 - 16.104, 16.151 - 16.154, 16.160, and 16.201 - 16.204 and new §16.106 are adopted without changes to the proposed text as published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3531) and will not be republished. The amendments to §§16.101, 16.105, and 16.156 are adopted with changes to the proposed text as published in the May 11, 2012, issue of the *Texas Register* (37 TexReg 3531).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Title 43, Texas Administrative Code (TAC), Chapter 16, Subchapter A, General Provisions, Subchapter B, Transportation Planning, Subchapter C, Transportation Programs, Subchapter D, Transportation Funding, and Subchapter E, Project and Performance Reporting, were adopted in 2010 to establish a comprehensive, transparent, well-defined, and understandable process for the department's project planning and programming functions that integrate priorities, financial forecasts, and project milestones. Senate Bill 1420, 82nd Legislature, Regular Session, 2011, amended Transportation Code, §201.601, and added new §§201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998 to provide a statutory framework for the department's transportation planning, programming, funding, and reporting obligations. The amendments are necessary to comply with Senate Bill 1420 and clarify existing language.

SUBCHAPTER A, GENERAL PROVISIONS

Amendments to §16.2(a) add new definitions including "chief financial officer" in paragraph (1), "chief planning and project officer" in paragraph (2), "Federal Railroad Administration" in paragraph (14), and "transportation reinvestment zone" in paragraph (36). There are no current definitions for these terms and it is important to clearly identify them as participants and factors in the planning, programming, and funding sections.

Amendments to §16.2(a) also modify certain definitions. "Public transportation" adds the Federal Railroad Administration to the types of agencies and political subdivisions that provide financial assistance to public transportation entities. "Texas Highway Trunk System" adds the word "centerline" to clarify that the maximum miles in the system refer to centerline miles rather than lane miles. "Unified planning work program" deletes the word "bi-annual" and replaces it with the word "biennial" to correct a mistaken reference.

Amendments to §16.2(b) add new acronyms including "FRA" in paragraph (4) for the Federal Railroad Administration, "RTP" in paragraph (10) for a rural transportation plan, and "TRZ" in paragraph (19) for a transportation reinvestment zone. The acronyms are added for reference purposes.

Section 16.4, Introduction, is a description, explanation and overview of the actual planning and programming process that is described in detail in Subchapter B, Transportation Planning, and Subchapter C, Transportation Programs. Since there are many amendments to those two subchapters that affect the planning and programming process, it is necessary to make corresponding changes to §16.4. Amendments to §16.4 do not create new rights and obligations, but merely reflect the changes in Chapter 16, Subchapters B and C that are described in detail later in this Preamble as each applicable subchapter is addressed.

Changes in §16.4(b)(1) add a rural transportation plan to the long-range planning documents. This corresponds to changes made in §16.55 to formalize the process for developing long-range strategies in rural areas of the state.

Changes in §16.4(c)(1) set the period of time for the statewide long-range transportation plan (SLRTP) at 24 years. This corresponds to changes made in §16.54(a) to comply with Transportation Code, §201.601 in Senate Bill 1420. Changes in §16.4(c)(1) also add the statewide transportation program (STIP) and unified transportation program (UTP) to the SLRTP. This corresponds to changes made in §16.54(b) to ensure that the long-range plan is comprehensive and the projects flow seamlessly through the planning, programming, and implementation phases.

Amendments to §16.4(c)(3) describe the new concept of a rural transportation plan as a long-range plan developed by the department for areas not included in the boundaries of a metropolitan planning organization, that covers a period of at least 20 years. This corresponds to changes made in §16.55 to formalize the process for developing long-range strategies in rural areas of the state.

Amendments to §16.4(d) clarify that the first four years of the ten-year UTP include projects in the STIP and the following six years contain the remaining projects.

Amendments to §16.4(e) clarify that: projects in the transportation improvement program (TIP) and in the STIP can include maintenance as well as construction projects; and financial constraints for projects listed in the STIP relate to funds that are reasonably expected to be available. A reference to funding available for the first two years of the STIP in nonattainment and maintenance areas is deleted from §16.4(e) because there was

no similar language in the body of the actual text for the STIP in §16.103. It described a federal requirement imposed by 23 C.F.R. Part 450 and federal law will continue to control on this issue.

Amendments to §16.4(f) delete the existing graphic flow chart and replace it with a new graphic that better illustrates the planning and programming process.

SUBCHAPTER B, TRANSPORTATION PLANNING

Amendments to §16.51(d) delete the word "contract" and replace it with the word "agreement" to be consistent with other references to "planning agreements" in §16.51(d).

Amendments to §16.52(a)(1) delete the word "bi-annually" and replace it with the word "biennially" to correct the required timeframe for developing the unified planning work program. A metropolitan planning organization (MPO) must develop a unified planning work program annually or every two years.

Amendments to §16.52(a)(5) revise the due date for submission to the department of the MPOs' annual performance and expenditure report from "December 31" to "December 15." This change allows the department more time to review and forward a report to the Federal Highway Administration while still providing an extended period of time for an MPO to submit the report.

Amendments to §16.52(b)(5) delete the language that describes how environmental studies are treated for purposes of using federal transportation planning funds. The language draws a distinction between environmental studies for corridor level planning which are permitted uses and specific project level planning and engineering which are not. This reference is deleted because notwithstanding the department's rule provisions, federal transportation planning funds are subject to the terms and conditions of federal law under 23 C.F.R. Part 450 and federal law will control on this issue.

Amendments to §16.53 clarify that an MPO must develop, update, and revise its 20-year metropolitan transportation plan (MTP) on a time cycle that coincides and is compatible with the statewide long-range transportation plan. It is critical to the overall process that MPOs and the department coordinate their planning efforts and that the plans of each are consistent. If the various MTPs are not developed on substantially the same schedule, it is impossible for the department to prepare statewide plans and updates that contain reasonably accurate information. The joint obligation of the department and MPOs to coordinate the planning process is consistent with Transportation Code, §201.620 and §472.035, and federal regulations in 23 C.F.R. Part 450.

Amendments to §16.54(a) revise the period of time covered by the statewide long-range transportation plan (SLRTP) from a variable period described as "not less than 24 years" to a fixed period of "24 years." This change is mandated by Transportation Code, §201.601 in Senate Bill 1420. Another change deletes the word "turnpikes" and replaces it with the words "toll roads" to be consistent with other references to toll roads throughout Chapter 16.

Amendments to §16.54(b)(1) and (2) add the STIP and UTP as components of the SLRTP to ensure that the long-range plan is comprehensive and the projects flow seamlessly through the planning, programming, and implementation phases. The amendments to §16.54(b)(3) simplify and broaden the department's specific listed long-term transportation goals to three: efforts to maintain a safe transportation system, address travel congestion, and connect Texas communities. These three goals highlight the department's core functions, but they are not exclusive. The Texas Transportation Commission (commission) may periodically adopt additional long-term transportation goals.

Amendments to §16.54(d) add a requirement that in developing each of the department's transportation plans and policy efforts, the department clearly reference the SLRTP and specify how the plan or policy efforts supports or relates to the long-term transportation goals. This change is mandated by Transportation Code, §201.6015 in Senate Bill 1420.

Amendments to §16.54(e) clarify that an amendment, update, or revision of the STIP or UTP is an administrative modification of the SLRTP and does not require a formal update. Section 16.54(b)(1) and (2) add the STIP and UTP as components of the SLRTP. Since the STIP and UTP are required to be revised and updated more frequently than the SLRTP, this addition is necessary to prevent unnecessary updates to the SLRTP.

Amendments to §16.54(f) clarify several issues involving the process of public involvement for development of the SLRTP. Paragraph (1) clarifies that the department will seek to effectively engage the general public and stakeholders in development of the SLRTP. Although the existing wording is consistent with federal regulations in 23 C.F.R. Part 450, the replacement wording more accurately reflects the department's intention to proactively seek public involvement. Amendments to paragraph (2) shift the focus from a regional perspective to a more local district perspective. Amendments to paragraph (3) clarify that a representative from a district is only under an obligation to attend a public meeting for an update of the SLRTP if the substance of the update affects that particular district. New paragraph (4) clarifies that the department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants. All of the changes to §16.54(f) are designed to provide flexibility to meet the physical long distance challenges across the state while still maintaining effective public involvement.

Amendments to §16.54(h) add SLRTP updates and administrative modifications to the documents that the department will publish on its website and make available for review at each of the district offices and at the department's Transportation Planning and Programming Division offices in Austin.

Amendments to §16.55(a) add specific requirements for the department to develop a 20-year rural transportation plan (RTP) to include long-range strategies that lead to the development of an integrated intermodal transportation system. The RTP will be cooperatively developed by the department, rural planning organizations, and municipalities, counties, public transportation operators, and other local transportation entities operating outside the boundaries of an MPO. The RTP will be based on the funding assumptions and forecasts applicable to all other statewide planning and programming, and must be compatible with the SLRTP. Although a general obligation currently exists in §16.55 to develop long-range strategies for the rural areas of the state, the amendments include new specific requirements to formalize that process.

Amendments to §16.55(b) add a requirement that the prioritized list of projects in the RTP include major transportation projects as described in new §16.106. This change is mandated by Transportation Code, §201.994 in Senate Bill 1420. Amendments to §16.55(b) also delete the phrase "district engineer of the district in which the area is located" as the position within the department

responsible for long-range planning recommendations in areas outside of the boundaries of an MPO and RPO, and replace it with the "department." This change provides more flexibility for the department to allocate responsibilities within its administrative structure.

SUBCHAPTER C, TRANSPORTATION PROGRAMS

Amendments to §16.101 assimilate the requirements for development of a transportation improvement program (TIP) for a metropolitan planning area with those imposed by state law on development of the unified transportation program (UTP), and clarify the wording in several provisions. Changes in §16.101(a) and (i) reference corresponding subsections relating to the UTP in §16.105(b) and (d) respectively, to coordinate the prioritized listing of projects within each funding category and the criteria to be used for project selection and priority ranking. These changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420. An additional change in §16.101(a) deletes the language "the category of funding described in §16.153 of this chapter (relating to Funding Categories) and by." The deleted requirement that a TIP contain a list of projects that must be prioritized by the category of funding is not mandated by federal law or used in development of the UTP and is overly burdensome to the MPOs. The additional change to §16.101(a) is addressed in the COMMENTS section of this preamble.

Amendments to §16.101(g) delete a specific requirement that in nonattainment areas, the plan must demonstrate that funding is available or committed for the first two years of the TIP. This statement reflects a requirement currently identified in 23 C.F.R. Part 450, Subpart C. The MPOs must comply with federal law under §16.101(b) and there is no need to repeat those requirements in the department's rules. Because the timing of this obligation is unclear in the context of the department's and the MPO's individual programs, the requirement is removed from §16.101(g).

Amendments to §16.101(k)(1)(C)(ii) clarify one of the circumstances under which an amendment to the TIP is not required. The current language of this clause applies to highway projects and describes only a change in the cost estimate where such change is not greater than 50 percent of the approved cost estimate and the revised cost estimate is less than $1,500,000. There are other standards for transit projects. Rather than specifically reference every possible different standard under federal law, the amendment adds a general qualifier for those situations where federal law or regulation specifies a different cost estimate percentage and condition relating to waiver of the TIP amendment requirement. The word "project" is also added to §16.101(k)(1)(C)(ii) and (iii) to clarify that the referenced cost estimate and letting date relate to a specific project.

Amendments to §16.102(a) add a reference to 23 U.S.C. §135 and 23 C.F.R. Part 450 to clarify that a rural transportation improvement program (RTIP) for an area of the state outside of metropolitan planning areas must also comply with federal law. The amendments also provide for the assimilation of the requirements for development of an RTIP with those imposed by state law on development of the unified transportation program (UTP). Amendments to §16.102(a) reference the UTP in §16.105 to coordinate the prioritized ranking of projects within each funding category and the criteria to be used for project selection and priority ranking. These changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

Amendments to §16.102(i) provide greater flexibility for the department to maximize public involvement in the development and revisions to the RTIP. The specific requirement to publish notice in a local newspaper is deleted and replaced with a general requirement to publish notice as appropriate to maximize public involvement. In many rural areas of the state, a newspaper notice may still be used. In other areas, the department can select other methods that will be more effective. The phrase "public hearing" is replaced with the phrase "public meeting" to clarify that there will be an informal exchange of information and concerns between the department and the public rather than a structured hearing.

Amendments to §16.103(d)(l) delete an obligation for the department to provide additional public involvement at the local level during development of the statewide transportation improvement program (STIP). A statewide public hearing regarding the adoption of the STIP is retained. During implementation of Chapter 16 in the period following its effective date of January 1, 2011, the department determined that the local public meetings for development of the STIP were duplicative of meetings held for the adoption of the individual TIPs under §16.101 and RTIPs under §16.102. The STIP by law includes all of the TIPs and RTIPs approved in accordance with §16.101 and §16.102. The STIP meetings were redundant to the TIP and RTIP public involvement initiatives, poorly attended, and an inefficient use of department resources.

Amendments to §16.103(f)(2) add the phrase "or the department" to clarify that the department may submit a request for an exception to the quarterly STIP revision schedule as well as an MPO.

Amendments to §16.104 delete the phrase "applicable district engineer" and replace it with the word "department" to provide for flexibility when making programming recommendations concerning prioritization of projects in the department's UTP for an area that is outside of the boundaries of an MPO and an RPO.

Amendments to §16.105 significantly revise the requirements for development of the department's unified transportation program (UTP). Most of the changes are necessary to comply with the process mandated by Transportation Code, §§201.991, 201.992, 201.994, and 201.995 in Senate Bill 1420. Other changes are made to provide more flexibility with implementation of the annual program.

Amendments to §16.105(a) add the words "and maintenance" to clarify that projects in the UTP include both construction and maintenance projects. The word "cooperate" is deleted and replaced with the word "collaborate" and the listing of "metropolitan planning organizations (MPO)" and "rural planning organizations (RPO)" is deleted and replaced with the phrase "local transportation entities." These changes are necessary to comply with the wording and concepts mandated by Transportation Code, §201.991 in Senate Bill 1420.

Amendments to §16.105(b)(1) revise and add to the requirements for development of the UTP. The phrase "and other authorized entity" is added as a type of entity entitled to receive an allocation of funding in the UTP. This change makes it consistent with references in Subchapter D, Transportation Funding.

Amendments to §16.105(b)(2) clarify that projects in the UTP include both construction and maintenance projects. The phrase "and the applicable funding category to which a project or program is assigned" is added to the requirement that there must be a listing of all projects and programs that the department intends

to develop. Amendments to §16.105(b)(2)(G) also add a list of major transportation projects that the department must incorporate into its listing of projects and programs that the department intends to develop in the UTP. These changes are necessary to comply with the wording and concepts mandated by Transportation Code, §§201.991, 201.992, 201.994, and 201.995 in Senate Bill 1420.

Amendments to §16.105(b)(2)(D) add the words "if any" to be consistent with changes in §16.105(c) that delete the word "shall" and replace it with the word "may." Those two provisions were originally incorporated into the requirements for developing a UTP in order to provide the department with the most current project information. Based on the department's experience, however, the MTPs, TIPs, and unified planning work programs are being reviewed and updated through the normal cycles of each. That process provides sufficient information to the department for updating the UTP. By converting the annual reevaluation of project selection report from mandatory to optional, each MPO has the choice on an annual basis of updating project selection information if the MPO determines it can benefit from the updated information. The additional changes to §16.105(b) and (c) are addressed in the COMMENTS section of this preamble.

Amendments to §16.105(b)(4) add another item that the department must incorporate into the UTP. The department must designate the priority ranking of each listed project within a program funding category. This change is necessary to comply with the wording and concepts mandated by Transportation Code, §201.992 and §201.995 in Senate Bill 1420.

Amendments to §16.105(d)(1) revise and clarify the department's transportation goals that will be considered as criteria for project selection in the UTP. The goals of safety and congestion relief are revised and simplified. The goal to connect Texas communities is added. The goals to "maintain and preserve the existing transportation system," "increase the accessibility and mobility of the transportation system for all transportation users," "support the economic vitality of the area," and "promote efficient system management and operation" are deleted. They are replaced with a provision that incorporates the goals identified in the statewide long-range transportation plan (SLRTP). The three specifically identified goals of safety, addressing travel congestion, and connecting Texas communities and transportation systems are fundamental to the operation of the state highway system and must always be included. By then incorporating the other goals identified in the SLRTP, the department is able to react to changing circumstances over the years and sustain a modern and responsive transportation system. The potential of a project to assist the department in attainment of the measurable targets for the transportation goals is also added to the criteria for project selection in the UTP.

Amendments to §16.105(d)(2) add a requirement that the department establish criteria to rank the priority of each project listed in the UTP based on the transportation needs for the state and the goals of the department. A project will be ranked within its applicable program funding category and classified as tier one, tier two, or tier three for ranking purposes. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. An exception to the tier one, tier two, or tier three ranking designation is provided for projects designated for development or construction in accordance with the mandates of state or federal law. This change is necessary to comply with the wording and concepts mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

Amendments to §16.105(e) clarify the process for adopting the UTP. The deadline for adoption of the UTP is changed from March 31 of each even-numbered year to August 31 of each year. This change is necessary to comply with the wording and concepts for an annual UTP mandated by Transportation Code, §201.992 in Senate Bill 1420. Since the department must develop a new UTP every year, the August 31 date provides the maximum time to develop the document and adjust to changing circumstances prior to the beginning of the next fiscal year. The word "commission" is deleted and replaced with the word "department" to clarify that the ministerial function of providing a hearing prior to the adoption of the UTP and any updates is not a commission function. Amendments to §16.105(e) also clarify the requirements for updating the UTP. The UTP may be updated more frequently than the annual adoption if it is necessary to authorize a major change to one or more funding allocations or priority project listings. The need for these changes was identified during implementation of Chapter 16 in the period following its effective date of January 1, 2011.

Amendments to §16.105(f) clarify the requirements for making administrative revisions to the UTP that are minor in nature and do not rise to the level of a formal update. An administrative revision may occur at any time and is defined as a minor or nondiscretionary change to funding allocations and project listings. The subsection then specifically identifies seven examples of an administrative revision: (A) a project may be added to the UTP or moved forward or delayed if: (i) the status of a listed project changes and if the moved or added project can be developed and let within the district's or MPO's allocated funds in the applicable program funding category during two consecutive years of the UTP; (ii) the project and funding for the project is specifically identified in a commission minute order for pass-through toll financing; or (iii) the project and funding for the project is specifically identified in a federal or state legislative act or appropriation; (B) a district or MPO may transfer all or a portion of its allocated funds either within a program funding category or between funding categories during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable funding category as listed in the UTP is not exceeded or reduced; (C) a district or MPO may transfer all or a portion of its allocated funds from a program funding category to another district or MPO during the first two years of the UTP if the transferred funds are returned to the contributing program funding category within the same two year period and the two year total allocation for each applicable funding category as listed in the UTP is not exceeded or reduced; (D) a local government may provide additional funding contributions for a project; (E) a district may transfer all or a portion of its allocated funds in a program funding category to an adjoining district for a project that extends across the districts' common boundary; (F) a district or MPO may transfer any unspent excess allocated funds remaining in a program funding category at the end of a fiscal year to the same program funding category for the next fiscal year; and (G) projects that are listed for informational purposes in program funding categories identified as allocation programs may be added to or deleted from the categories. The seven examples are not an exclusive listing of administrative revisions. The need for flexibility in dealing with minor changes to the UTP was identified during implementation of Chapter 16 in the period following its effective date of January

1, 2011. There were numerous instances requiring quick action on minor changes to the UTP that could not go forward without first going through the extensive public involvement requirements applicable to a formal update. The changes in §16.105(f) allow the department to expedite the process for minor changes to the UTP and develop projects in a more business-like manner.

Amendments to §16.105(f) also clarify the process for making administrative revisions to the UTP. Paragraph (5) authorizes the department to incorporate an administrative revision into the UTP if the request complies with the requirements set out in the rule and compliance is confirmed by the chief planning and project officer. If a request otherwise qualifies as a minor or nondiscretionary change to a funding allocation or project listing in the UTP but does not comply with the seven specific listed examples, the request must also be approved by the chief financial officer. In determining whether to approve the administrative revision request, the chief financial officer must consider the fiscal impact of the requested revision in the context of the current cash flow forecast. Paragraph (6) requires department staff to provide a written report to the commission within two months after the end of each quarter identifying all administrative revisions implemented during the preceding quarter. These additions seek to provide an oversight review of the requests to reduce the possibility of inadvertent transfers.

Amendments to §16.105(g) clarify several issues involving the process of public involvement for development of the UTP. Paragraph (1) clarifies that the department will seek to effectively engage the general public and stakeholders in development of the UTP. Although the existing wording is consistent with federal regulations in 23 C.F.R. Part 450, the replacement wording more accurately reflects the department's intention to proactively seek public involvement. The change in paragraph (2) shifts the focus from a regional perspective to a more local district perspective. The change in paragraph (3) clarifies that a representative from a district is only under an obligation to attend a public meeting for an update of the UTP if the substance of the update affects that particular district. New paragraph (4) clarifies that the department may conduct a public meeting by video-teleconference or other electronic means that provide for direct communication among the participants. All of the changes to §16.105(g) are designed to provide flexibility to meet the physical long distance challenges across the state while still maintaining effective public involvement.

Amendments to §16.105(h) delete the word "Finance" and replace it with the words "Transportation Planning and Programming" to reflect the new organizational structure and responsibilities within the department for development of the UTP.

Amendments to §16.105(i) add UTP administrative revisions to the UTP related documents that the department must publish on the department's website and have available for review at each of the district offices and the department's Transportation Planning and Programming Division offices in Austin.

New §16.106 establishes criteria for designating a project as a major transportation project, develops benchmarks for evaluating the progress of a major transportation project and timelines for implementation and construction of a major transportation project, and identities the critical benchmarks that must be met before a major transportation project may enter the implementation phase of the UTP. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 and §201.995 in Senate Bill 1420.

New §16.106(a) establishes criteria for designating a project as a major transportation project. A major transportation project is defined in subsection (a) as the planning, engineering, right of way acquisition, expansion, improvement, addition, or contract maintenance, other than the routine or contracted routine maintenance of a bridge, highway, toll road, or toll road system on the state highway system that fulfills or satisfies a particular need, concern, or strategy of the department in meeting the transportation goals established in the UTP. It is limited to highway facilities and does not include rail, aviation, or other modes of transportation. A project may be designated by the department as a major transportation project if it meets one or more of the following criteria: (1) the project has a total estimated cost of $500 million or more; (2) there is a high level of public or legislative interest in the project; (3) the project includes a significant level of local or private entity funding; (4) the project is unusually complex; or (5) the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need. The criteria for designating a project as a major transportation project are patterned on guidelines promulgated by the U.S. Department of Transportation Federal Highway Administration for identifying "major projects" under federal law.

New §16.106(b) requires a list of major transportation projects to be annually updated and incorporated into the UTP. This change is necessary to comply with the process mandated by Transportation Code, §201.992 and §201.994 in Senate Bill 1420.

New §16.106(c) describes the benchmarks for planning, implementation, and construction of a major transportation project. The benchmarks include environmental clearance issued by the applicable federal or state agency; acquisition or possession of right of way parcels sufficient to proceed to construction in accordance with planned construction phasing; adjustment of utility facilities or coordination of adjustment sufficient to proceed to construction in accordance with planned construction phasing; 100 percent completion of plans, specifications, and estimates; award of construction contract by the commission; and completion of construction. Progress of the projects based on the benchmarks and corresponding timelines will be tracked and evaluated in accordance with reporting requirements in Subchapter E, Project and Performance Reporting. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 in Senate Bill 1420.

New §16.106(d) defines the implementation phase as the first year of the UTP. The critical benchmarks that must be met before a major transportation project may enter the implementation phase are: the project must be listed in the statewide long-range transportation plan and the applicable metropolitan transportation plan; and the project has environmental clearance issued by the applicable federal or state agency. Use of the environmental clearance benchmark limits placement of major transportation projects in the first year of the UTP to only those projects that have a realistic chance to proceed to construction in that time frame while still allowing those projects to complete right of way acquisition, adjustment of utility facilities, and plans, specifications, and estimates during the final year. The executive director may approve an exception to the critical benchmark limitation if the project satisfies a time sensitive critical need of the department related to safety, system connectivity, a hurricane evacuation route, reconstruction of a large infrastructure facility, or other similar need, and there is a reasonable likelihood that environmental clearance for the project will be issued and the other required development benchmarks will be timely accomplished

to permit an award of a construction contract within the one year implementation phase of the UTP. These changes are necessary to comply with the process mandated by Transportation Code, §201.994 in Senate Bill 1420.

SUBCHAPTER D, TRANSPORTATION FUNDING

Amendments to §16.151(a) delete the phrase "in cooperation with metropolitan planning organizations (MPO)" from the department's obligation to develop mutually acceptable assumptions for the purpose of long-range federal and state funding forecasts, and replace it with the broader concept of "in collaboration with local transportation entities." This change is necessary to comply with the wording mandated by Transportation Code, §201.993 in Senate Bill 1420.

Amendments to §16.151(a) also add an obligation that the department and each planning organization will use the mutually developed funding assumptions to "coordinate" development of all long-range, mid-range, and short-range planning and programming documents, including the metropolitan transportation plans, rural transportation plan, statewide long-range transportation plan, transportation improvement programs, rural transportation improvement programs, statewide transportation improvement program, and unified transportation program. The obligation to use the same funding assumptions is critical to the development of cohesive planning and programming documents among the various participants and is consistent with federal regulations under 23 C.F.R. Part 450, and the concepts and wording mandated by Transportation Code, §201.993 in Senate Bill 1420.

Amendments to §16.151(b)(2) delete the phrase "and the Texas Mobility Fund" in the paragraph's reference to the anticipated level of registration fees and other state non-gas tax revenues to be used as one of the factors to be included in development of the funding assumptions. As amended, the anticipated level of fees and revenues only applies to those deposited to the credit of the state highway fund. Including the reference to the Texas Mobility Fund is not technically correct because it is funded with bond proceeds rather than fees and revenue.

Amendments to §16.151(b)(4) delete the word "revenue" and replace it with the word "funding." The focus of the forecasting assumptions is on the broader concept of all available funding regardless of the source, rather than the more limited concept of revenue.

Amendments to §16.151(c)(2) delete the word "cooperate" and replace it with the word "collaborate." This change is consistent with wording used to describe the working relationship between the department and transportation entities in multiple provisions of the Transportation Code as provided for by Senate Bill 1420.

Amendments to §16.152(b)(1) add the phrase "state and federal" to clarify the types of funding sources available for transportation projects that must be identified in the department's cash flow forecast.

Amendments to §16.152(f) add "unified transportation program" to clarify that the estimated funding levels derived from the cash flow forecast will be used to determine the amount of funding and allocate funding for that programming document. This change is consistent with the current meaning of the paragraph and wording mandated by Transportation Code, §201.992 and §201.993 in Senate Bill 1420.

Amendments to §16.153 correct and clarify the language and meaning of several provisions. In §16.153(a)(3) the phrase "Texas Mobility Fund" is added to complete the description of the types of funding included in Category 3 Non-Traditionally Funded Transportation Projects. In §16.153(a)(12) the phrase "and provide pass-through toll financing for local communities" is deleted from Category 12 Strategic Priority because that type of funding is also included in the description of Category 3 Non-Traditionally Funded Transportation Projects where it is more appropriately located. In §16.153(b) the phrase "ten-year unified transportation program described in §16.105 of this chapter" is deleted and replaced with the more concise acronym "UTP." In §16.153(b)(2) the phrase "multimodal related" is deleted because it is redundant and unnecessary. In §16.153(b)(2) the word "federal" is deleted because state funding may also be used and the limitation to federal caused an incorrect statement. In §16.153(b)(4) the phrase "water related projects including" is added to make the sentence grammatically correct.

Amendments to §16.154 add a classification reference to each of the highway related program funding categories to identify whether the funding category is a project specific (projects specifically selected and identified for funding in the UTP) or allocation program (responsibility for selecting projects and managing the allocation of funds are delegated to districts, selected administrative offices of the department, and MPOs). The phrase "as an allocation program" is added to §16.154(a)(1), (4) - (7), (c)(2), and (4). The phrase "for specific projects" is added to §16.154(a)(2), (c)(1), and (6). In §16.154(c)(3) the phrase "Projects generally funded as an allocation program with some specific projects designated under the Safety Bond Program" is added to Category 8 Safety. In §16.154(c)(5) the phrase "generally funded as an allocation program with some specific projects designated under miscellaneous federal programs" is added to Category 10 Supplemental Transportation Projects. The classifications are consistent with current treatment of the program funding categories and these changes provide certainty and transparency.

New §16.154(d) is added to define the phrase "allocation program." The phrase refers to a type of program funding category identified in the UTP for which the responsibility for selecting projects and managing the allocation of funds has been delegated to department districts, selected administrative offices of the department, and MPOs. Within the applicable program funding category, each district selected administrative office, or MPO is allocated a funding amount and projects can be selected, developed, and let to contract with the cost of each project to be deducted from the allocated funds available for that category. The definition is consistent with current treatment of the program funding categories and this addition provides certainty and transparency.

New §16.154(e) is added to describe the process for listing projects in the UTP. The department will list the projects that the department intends to develop and let during the ten-year UTP and will reference for each listed project the program funding category to which it is assigned. If a program funding category is an allocation program and specific projects may be selected in the future, the listing is for informational purposes only and contains those projects reasonably expected at the time the UTP is adopted or updated to be selected for development or letting during the applicable period. Since maintenance projects are usually small, have multiple locations in a contract, and are short term, it is not feasible to list all of these projects. Accordingly, Category 1 Preventive Maintenance and Rehabilitation is identified in this new subsection as an exception to the listing

requirements. These changes are consistent with the project listing concept mandated by Transportation Code, §§201.991, 201.992, and 201.995 in Senate Bill 1420.

New §16.154(f) is added to impose a requirement that in distributing funds to the districts, MPOs, and other authorized entities, the department may not exceed the cash flow forecast. This change is mandated by Transportation Code, §201.997 in Senate Bill 1420.

Amendments to §16.156(b)(1) add the phrase "or otherwise reduce funding" to expand the prohibition against the department decreasing an allocation to a district or MPO because of the failure of a region to include toll projects in a region's transportation plan, participation by a political subdivision in the funding of a transportation project including use of money from a transportation reinvestment zone, or revenue received by the department under a comprehensive development agreement and used to finance the construction of projects in the region. This change is mandated by Transportation Code, §222.109 in House Bill 563.

Amendments to §16.156(b)(1)(B) add a reference to "§222.108" to expand those Transportation Code references that authorize use of money collected in a transportation reinvestment zone. This change is necessary to be consistent with Transportation Code, §222.108 in House Bill 563 that authorizes money collected in a transportation reinvestment zone to be used for municipality and county selected transportation projects that are not pass-through toll projects.

Amendments to §16.156(b)(1)(C) and §16.156(b)(2)(B) add the phrase "surplus revenue of a state toll project or system" to clarify the distinction between comprehensive development agreement payments and surplus revenue. Neither source of funds may be used to reduce funding or decrease an allocation to a district or MPO. These limitations are imposed by Transportation Code, §228.0055 and §228.006. The additional changes to §16.156(b) are addressed in the COMMENTS section of this preamble.

New §16.156(c) adds language that prohibits the department from reducing the amount of funding previously committed to a particular transportation project because a transportation reinvestment zone is designated in connection with that project. This change is consistent with the wording and concept mandated by Transportation Code, §222.109 in House Bill 563.

In §16.160(c) the word "proportionally" is deleted because after a significant change in the department's funding and an authorized change in the allocation of funds to a program funding category under §16.160(b), the commission has the discretion to adjust allocations to individual districts and MPOs to best meet the commission's goals and the needs of the state. The adjustment may not be proportionate in every instance.

SUBCHAPTER E, PROJECT, PERFORMANCE, AND FUNDING REPORTING

Amendments to §16.201(a) - (c) add wording to clarify the scope of existing provisions. The word "funding" is added to the section title and to subsections (a) and (b) to more accurately describe that the department's reporting systems involve funding information as well as project and performance information. The phrase "under the jurisdiction of the department" is added to subsection (c) to clarify that the department's responsibility for providing information extends only to roads over which the department has legal control.

New §16.201(d) and (e) add responsibilities for the department to provide annual reports for both its project reporting system under §16.202 and its performance reporting system under §16.203 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues. These two subsections consolidate and replace the same reporting requirements that currently exist in §16.202(c) and (d) and §16.203(f) and (g). The existing provisions are deleted by amendments to those two sections. New §16.201(d) also adds responsibilities for the department to provide annual reports for both its project reporting system under §16.202 and its performance reporting system under §16.203 to political subdivisions located in a district that is the subject of the report. This change is mandated by Transportation Code, §201.809 in Senate Bill 1420.

Amendments to §16.202(a) make grammatical changes to replace the phrase "work plan" with the phrase "work program," add the phrase "in a district" to clarify that the work program focuses on transportation projects in that particular unit of the department's jurisdiction around the state, and move the language concerning the method of computing the four year period from its existing location of text in §16.202(a)(1) to §16.202(a).

Amendments to §16.202(a)(2) expand the requirements for reporting on each project in the work program. The work program must contain: the status of the project; each source of funding, the funding category to which the project has been assigned, and the project's priority within the category; an identification of each phase and benchmark of project development, including environmental clearance, right of way acquisition or possession, utility adjustment or coordination, completion of plans, specifications, and estimates, award of construction contract, and completion of construction; project schedule with estimated timelines for completing each applicable benchmark; summary of progress that identifies whether the project is being completed on-time and on-budget; and a list of department employees responsible for the project and contact information for each person listed. These changes are mandated by Transportation Code, §201.807 and §201.808 in Senate Bill 1420.

New §16.202(a)(3) adds to the requirements for reporting on each major transportation project in the work program. The work program must also contain for each major transportation project: the estimated cost of each phase of project development; and the progress on each applicable benchmark of the project that identifies whether the project is being completed on-time and on-budget. These changes are mandated by Transportation Code, §201.809 and §201.998 in Senate Bill 1420.

Amendments to §16.202(b) expand the types of transportation projects that are subject to an annual review of the benchmarks and timelines by deleting specific references to projects funded under certain program funding categories and adding the phrase "included in the work program." Amendments also add three specific subjects that must be included in the annual report: the status of each project identified as a high priority in the UTP; a summary of the number of statewide project implementation benchmarks that have been completed; and information about the accuracy of previous department financial forecasts. These changes are mandated by Transportation Code, §201.809 and §201.998 in Senate Bill 1420.

Amendments to §16.202 delete subsection (c) and (d) regarding the department's obligation to provide annual reports for its project reporting system under §16.202 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing com-

mittee of each house of the legislature with primary jurisdiction over transportation issues. These subsections were consolidated with other annual reporting obligations and moved to new §16.201(d) and (e).

Amendments to §16.203(b)(1) expand and specify the type of project development phases that must be reported on as part of the required performance measures for evaluating the effectiveness of the department's expenditures on the statewide transportation system in achieving its transportation goals. The performance measure now covers the percentage of transportation projects for which the project development phases, including environmental clearance, right of way acquisition or possession, utility adjustment or coordination, completion of plans, specifications, and estimates, and award of construction contract are completed on or before the planned implementation timelines and on-budget. This change is consistent with references in §16.202(a) to work program reporting requirements and with concepts mandated by Transportation Code, §201.808 and §201.998 in Senate Bill 1420.

New §16.203(d) adds three types of information to the department's reporting system: reports prepared by the department or an institution of higher education that evaluate the effectiveness of the department's expenditures on transportation projects to achieve the transportation goals identified by the statewide long-range transportation plan; information about the condition of bridges on the state highway system; and information about the condition of the pavement for each highway on the state highway system. These changes are mandated by Transportation Code, §201.808 in Senate Bill 1420.

Amendments to §16.203(e) delete the phrases "project and" and "for performance measures" from the description of the performance reporting system. This change more accurately describes the performance reporting system required under §16.203.

Amendments to §16.203 delete subsections (f) and (g) concerning the department's obligation to provide annual reports for its project reporting system under §16.203 to each member of the legislature and to the lieutenant governor, the speaker of the house of representatives, and the chair of the standing committee of each house of the legislature with primary jurisdiction over transportation issues. These subsections were consolidated with other annual reporting obligations and moved to new §16.201(d) and (e).

Amendments to §16.204(a)(1) add a more detailed description of the source of department funds for the purpose of developing an account information reporting system. The source is defined as "for the department's funds whether from the state highway fund, bond proceeds, or revenue from a comprehensive development agreement or a toll project." This change is mandated by Transportation Code, §201.808 in Senate Bill 1420.

New §16.204(b) adds more detailed reporting requirements for the department's funding and expenditures. The department will report on the funding and expenditures as applicable by each: district; program funding category; and source of funds. This change is mandated by Transportation Code, §201.807 and §201.808 in Senate Bill 1420.

COMMENTS

Comments on the amendments and new rule were received from Michael Morris, Director of Transportation, Regional Transportation Council, North Central Texas Council of Governments. Mr. Morris submitted the following written comments to §§16.101, 16.105, 16.106, 16.152, 16.153, 16.154, and 16.156.

Comment: Amended §16.101(a) Requirements - The subsection states that projects in the TIP must be prioritized by the category of funding described in §16.153. Generally, projects are not prioritized by the category of funding, but rather by other factors, such as project need, project readiness, etc. The point is especially important given that most of the TIP projects have multiple funding categories, so prioritizing by funding category becomes overly complicated.

Response: The requirement in §16.101(a) that the TIP contain a list of projects that must be prioritized by the category of funding is in addition to the requirement that the list be prioritized by project within each funding category. The latter requirement is needed to be consistent with UTP requirements imposed by Transportation Code, §201.992 and §201.995. Prioritizing projects by the category of funding, however, is not mandated by either state or federal law and is not essential to development of the UTP. Since this obligation is overly burdensome to the MPOs, it is now deleted.

Comment: Section 16.101(b) Development of transportation improvement program (TIP) - The subsection states that the "State will provide an MPO with estimates of available federal and state funds to be used" in developing the financial plan for the TIP. This subsection should be amended to state that the State will provide funding estimates in advance of MPOs developing the four-year TIP. Currently, estimates are received late in the process, which delays the ability to create a financially constrained TIP listing.

Response: There were no changes proposed by the department for §16.101(b) and none of the proposed changes in other provisions of Chapter 16 have an impact on this subsection. Accordingly, the request for an additional change in existing rule language to impose a deadline for providing funding estimates to the MPOs as expressed in the comment is outside the scope of proposed amendments and cannot be adopted at this time. To incorporate a requested change in existing language that was raised for the first time at this late stage would deprive other interested participants and members of the public from an opportunity to comment about the specific issue and express concerns or alternatives. The planning and programming process is under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part on that ongoing review for future rule changes.

Comment: Section 16.101(b) Development of transportation improvement program (TIP) - The subsection states "The TIP shall be updated and approved at least every two years." The State should instead consider developing a new TIP/STIP every three years instead of every two years, since it is a four year document. Previously, it was amended every two years, when it was a three year document. A great amount of resources would be saved if the TIP/STIP development schedule was changed to a three year development timeframe.

Response: There were no changes proposed by the department for §16.101(b) and none of the proposed changes in other provisions of Chapter 16 have an impact on this subsection. Accordingly, the request for an additional change in existing rule language to change the TIP development schedule from every two years to every three years as expressed in the comment is outside the scope of proposed amendments and cannot be adopted at this time. To incorporate a requested change in ex-

isting language that was raised for the first time at this late stage would deprive other interested participants and members of the public from an opportunity to comment about the specific issue and express concerns or alternatives. The planning and programming process is under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part on that ongoing review for future rule changes.

Comment: Section 16.101(h) Transportation improvement program (TIP) approval - The subsection holds the TIP project selection criteria to the UTP project selection criteria. Per federal regulations, the TIP should be created by the MPOs and included in the STIP without change (23 U.S.C. §450.216(b)); therefore, it seems like the criteria should be officially set by the MPO. It is important to note that other provisions of these rules (see §16.101(e)) require the TIP to be consistent with the goals of the statewide long-range plan. Therefore, the criteria must be consistent with the overall goals of the statewide long-range plan, but should not necessarily be the exact same criteria as the UTP. Through the UTP, the department is programming and planning for an entire state, and criteria may be different at the state level than they would be in any specific region.

Response: The requirement in §16.101(h) that the TIP satisfy the project selection criteria developed for the department's unified transportation program (UTP) is necessary for consistent treatment of projects when the STIP is incorporated into the UTP as the final document authorizing funding for the development and construction of projects. The goals of the statewide long-range transportation plan and the criteria for selection of projects in the UTP are broad in scope and universal in applicability. It is extremely unlikely that criteria for selection of projects in the UTP will be inconsistent with those developed by the MPOs. The concept of coordination between MPOs and the department for consistent treatment of projects and compatibility of selection flows through multiple federal regulations including 23 C.F.R §§450.104, 450.216, 450.222, 450.306, and 450.324. In order for the department to comply with new legislation in Transportation Code, §§201.620, 210.808, 201.991, 201.992, 201.995, and 472.035 that deal with development of the statewide long-range transportation plan and the UTP, it is necessary for the MPOs to coordinate the MPOs' project selection criteria with those developed by the department for funding and development through the UTP.

Comment: Section 16.101(k)(1)(B)(iii) Modification - The subsection requires a STIP revision (formal action) to add a phase of work for a project (engineering, right of way, and construction). This provision is overly restrictive and creates STIP revisions on projects that are not really necessary. As long as the overall funding remains the same this item could easily be changed to an administrative modification.

Response: Section 16.101(k)(1)(B)(iii) provides that an amendment to the TIP (not the STIP as referenced in the comment) is required in nonattainment areas if there is a change in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a project. This provision is consistent with federal regulations in 23 C.F.R Part 450 for nonattainment areas and should not be changed.

Comment: Section 16.101(k)(1)(C) Modification - Control Section Job (CSJ) changes often arise, and do not require amendments. It seems like this item should be listed as a change that does not require a STIP revision.

Response: Section 16.101(k)(1)(C) is a general exception to the requirement for an amendment to the TIP (not the STIP as referenced in the comment). The listed exceptions are administrative in nature and do not require public review and comment, redemonstration of fiscal constraint, or a conformity determination. A mere change in the CSJ number is clearly administrative in nature and has historically been treated as such. Accordingly, a change in the CSJ number is added as new subparagraph (C)(iv) to the list of changes that do not require an amendment to the TIP.

Comment: Section 16.101(k)(1)(C)(iii) Modification - The subsection notes that a change in the letting date of a project does not require a STIP revision, unless the change affects conformity. However, letting dates are no longer shown in the STIP. Therefore, it seems more appropriate to note that changes in funding year for a project already listed in the four-year window of the STIP do not require a STIP revision, unless the change affects conformity.

Response: Section 16.101(k)(1)(C)(iii) describes one of the specific exceptions to the requirement for an amendment to the TIP (not the STIP as referenced in the comment) in the event of a change. It is unclear from the comment whether the author is describing the impact of the subparagraph on a TIP or a STIP. For purposes of the comment however, the meaning of the "letting date of a project" and "the funding year for a project" are basically the same. In order to cover all similar circumstances and provide maximum flexibility, the exception now lists both phrases.

Comment: Section 16.101(m) TIP public participation - The subsection states "Each MPO will develop a public participation process covering the development of a TIP in accordance with federal regulations," and "The MPOs shall also use the same procedures for amending the TIP." This last requirement overly restricts MPO ability to modify the public involvement process for TIP modifications. It requires that the process for developing a TIP be the same as the process for modifying a TIP. Currently the Dallas-Fort Worth MPO is developing mechanisms to streamline the TIP modification process, and this provision would prevent most of the streamlining ideas being discussed at this time from moving forward.

Response: There were no changes proposed by the department for §16.101(m) and none of the proposed changes in other provisions of Chapter 16 have an impact on this subsection. Accordingly, the request for an additional change in existing rule language to change the public participation process for development of a TIP amendment as expressed in the comment is outside the scope of proposed amendments and cannot be adopted at this time. To incorporate a requested change in existing language that was raised for the first time at this late stage would deprive other interested participants and members of the public from an opportunity to comment about the specific issue and express concerns or alternatives. The planning and programming process is under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part on that ongoing review for future rule changes.

Comment: Section 16.105(b)(2)(D) Requirements - The subsection references an MPO annual reevaluation of project selection in MTPs and TIPs in accordance with subsection (c) of the same section. There are no restrictions with regard to funding category, and the MPO has never been asked to perform this assessment. Section 16.105(c) further defines this effort. Is the department requesting this effort be performed due to a federal re-

quirement to annually reevaluate projects? The closest existing efforts include the annual review of Category 2-funded projects as part of the UTP (which involves the TIP, but not the MTP) or the letting schedule review, which is a joint department/MPO process that is also more closely aligned with the TIP than the MTP.

Response: Section 16.105(b)(2)(D) deals with development of a UTP and requires that the department take into consideration the MPOs' annual reevaluation of project selection in MTPs and TIPs. MPOs are required by §16.105(c) to annually reevaluate the status of project priorities and selection and provide a report of any changes to the department in order to provide the needed information. Those provisions were originally incorporated into the requirements for developing a UTP to provide the department with the most current project information. Based on the department's experience, however, the MTPs, TIPs, and unified planning work programs are being reviewed and updated through the normal cycles of each. That process provides sufficient information to the department for updating the UTP. The benefit to the department of obtaining updated information in the form of annual reports is often outweighed by the additional work and inconvenience of report preparation. In order to provide flexibility to the MPOs, the requirement is now changed from mandatory to optional.

Comment: Amended §16.105(d)(2) Project selection - This is a new subsection that notes that the department will establish the criteria for ranking each project in the UTP. Since different funding sources are the responsibility of different entities (the department, MPOs, etc.), it seems that this subsection should have a caveat that the establishment of criteria is different for each category, and is set by the entity selecting the projects. The subsection also references project "tiers" for ranking purposes, but the subsection does not define tier one, tier two, or tier three. This subsection also does not explain how projects are classified into the different tiers.

Response: Amended §16.105(d)(2) requires the department to establish criteria to rank the priority of each project listed in the UTP and is mandated by new Transportation Code, §§201.991(b), 201.992(b), 201.994(a), and 201.995(a). Collectively, those Transportation Code provisions establish a hierarchy of project ranking within each funding category and major transportation projects are automatically assigned the highest priority ranking and placed in tier one. In order to distinguish among project rankings and provide a manageable framework for prioritization, the department selected three classifications or categories of rank: tier one, tier two, and tier three. Tier one contains the highest ranking projects and tier two and tier three are in descending order of priority. Since all funding categories within the UTP are the responsibility of the department, the criteria must be developed by the department to ensure compatibility and consistency. The criteria will likely differ depending on the funding category and the department is beginning the process of developing specifics. Because this is a new concept, the development of criteria needs to be a flexible and evolving process in which collaboration with interested parties establishes the parameters and lessons learned through experience can be quickly implemented. The rule making and rule amendment process is not conducive to this level of detail and flexibility. Development of the criteria will be a collaborative effort and will be published prior to implementation.

Comment: Amended §16.105(f)(5) Administrative revisions - The Dallas-Fort Worth MPO suggests adding the phrase "and anticipated" to the last sentence of this subsection. The sentence would read, "In determining whether to approve the administrative revisions request, the chief financial officer shall consider the fiscal impact of the requested revisions in the context of the current and anticipated cash flow forecast."

Response: Amended §16.105(f)(5) requires the chief financial officer to consider the fiscal impact of the requested revision in the context of the current cash flow forecast when determining whether to approve an administrative revision request for minor changes or nondiscretionary changes to the UTP that do not comply with the specific situations and requirements described in the subsection. The sources of funding to be included in a cash flow forecast are defined in §16.152(g) to include "estimates of federal, state, and local money reasonably expected to be available - during the relevant period." A cash flow forecast is required in §16.152(a) to cover a period of not less than the next 20 years. Accordingly, the concept of "anticipated" funds is already included in the definition of the current cash flow forecast.

Comment: Amended §16.105 Unified Transportation Program (UTP) and §16.106 Major Transportation Projects - A critical review of how funding is identified for engineering/environmental clearance, right of way acquisition, and utility relocation should be conducted. The TIP, STIP, Metropolitan Transportation Plan, and UTP are supposed to be based on Total Project Cost (per SAFETEA-LU), but the department does not provide adequate information to enable the identification of funding for these costs. For instance, engineering and right of way budgets are not clearly communicated to MPOs (or districts), yet these funds exist and are used to develop projects. A true picture of total project cost cannot be provided until this issue is resolved.

Response: The comment is correct that neither §16.105 nor §16.106 directly address the issue of identifying and communicating funding information for engineering, environmental clearance, right of way acquisition, or utility relocation. Those are detailed procedural/process implementation issues that should be developed outside the formal rule structure. Sections 16.105 and 16.106 establish the basic framework for prioritizing and selecting projects in the UTP. There is no requirement in the two sections that is inconsistent with or would otherwise prohibit the development of the desired procedural guidance. Implementation issues for the planning and programming process are under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part of that ongoing review.

Comment: Amended §16.152(f) Uses of forecast - The department has been relying heavily on current cash flow forecasts to provide financial allocations for the UTP and TIP. Using the forecasts to regularly adjust funding allocations in the UTP has created a significant disruption to the ability to implement projects. In the same year, MPOs and districts are asked to push out significant amounts of funding for projects (due to a lower cash flow estimate) and later asked to move back up those same projects (often with insufficient time to process STIP revisions) due to a higher cash flow estimate. A critical review of the timing of UTP allocations updates due to cash flow forecast should be considered.

Response: Amended §16.152(f) requires the commission to use the cash flow forecast to estimate funding for each year of the UTP to determine the annual amount of funding in each of the program funding categories and to allocate funding to districts and MPOs. Under §16.152(a), the chief financial officer must is-

sue a new cash flow forecast before September 1 of each year. The requirement for an annual forecast to develop the UTP is contained in new Transportation Code, §201.993. The need to update the official cash flow forecast during the year is a function of the department's funding reality. Much of the funding comes from sources that are unpredictable and the department needs the flexibility to adjust funding allocations more than once a year in order to maximize use of time and dollars. Implementation issues for the planning and programming process is under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part of that ongoing review.

Comment: Section 16.153 Funding Categories - No mention is made of the department funding categories for engineering/environmental clearance, right of way acquisition, and utility relocation. If there is a requirement to include total project costs/funding in the TIP/STIP, the UTP should outline funds available for these purposes.

Response: The comment is correct that §16.153 does not contain funding categories for engineering, environmental clearance, right of way acquisition, or utility relocation. Those are individual cost items of a project and are not similar to the program funding categories in §16.153 that group and prioritize projects for the allocation of funding to districts and MPOs. Identification and communication of the individual cost items are detailed procedural/process implementation issues that should be developed outside the formal rule structure. There is nothing in §16.153 that is inconsistent with or would otherwise prohibit the development of the desired procedural guidance. Implementation issues for the planning and programming process is under continual review by the department based on lessons learned and collaborative discussions with interested participants. This comment will be considered as part of that ongoing review.

Comment: Amended §16.153(a)(12) Highway program funding categories - The subsection references Category 12 Strategic Priority funds, but is silent on the special categories of Category 12 that have been received by the Dallas-Fort Worth region and other regions, such as Category 12 Reconciliation Funds (CMAQ an STP-MM) and Category 12 (425) funds. A reference to these special categories should be included.

Response: Amended §16.153(a)(12) broadly describes the types of projects that fall within Category 12 Strategic Priority. There are currently some subcategories that are identified in the UTP for accounting and transparency purposes, but a listing of the subcategories in the rule creates a rigid structure that does not allow for needed flexibility to reflect changes from year to year. The rule making and rule amendment process is not conducive to this level of detail and flexibility.

Comment: Amended §16.154 Transportation Allocation Funding Formulas - The department should consider reducing the number of funding categories for which specific projects must be listed in the UTP. Adding this provision to certain categories (e.g., Texas Mobility Funds, Proposition 12) reduces the ability of MPOs and the department to coordinate funding exchanges on projects in order to expedite project implementation. The projects and their funding sources are already identified in the TIP/STIP. If they are also identified in the UTP individually, both funding documents will need to be changed each time a funding exchange occurs (versus just having to update the TIP/STIP). For example, in §16.154(a)(2), the addition of the phrase "for specific projects" limits the ability to swap Category 2 funded projects with other projects throughout the year. Similarly, in §16.154(c)(1) Nonformula Allocations, the addition of the phrase "for specific projects" limits the ability to swap Texas Mobility Fund, Proposition 12 (V2-MPO selected), Regional Toll Revenue, and Local Contribution funding on projects throughout the year. This flexibility has become increasingly important in the last few years and has enabled the Dallas-Fort Worth MPO to respond to various department initiatives in an expedited fashion. Removal of this phrase from this subsection would allow maximum flexibility for shifting funds between projects.

Response: Amended §16.154 identifies each of the twelve program funding categories as either an allocation program or one in which specific projects are identified and listed for development and funding purposes. The requirement for listing all projects that the department intends to develop or begin construction of during the ten-year UTP period, including specific major transportation projects, and the requirement that the UTP contain the category to which the project has been assigned and the priority of the project listed in the category, are contained in new Transportation Code, §§201.991, 201.992, 201.994, and 201.995. This mandate is reflected in §16.154(e). The listing requirement applies equally to program funding categories that are identified as allocation programs as well as those identified for specific projects, but the listing for allocation programs is based on reasonable expectations at the time of UTP adoption and is subject to less stringent rules for revision (see §16.105(f)(1)(G)). Since this obligation is imposed by statute, the department does not have discretion to remove the requirement for listing of specific projects.

Comment: Section 16.154 Transportation Allocation Funding Formulas - With regard to maintenance formulas, the implementation of toll roads in a region should not reduce the amount of maintenance funds received for state highways.

Response: Prohibitions against reducing the amount of maintenance funds, otherwise allocated by formula in §16.154, because of toll road implementation and revenue is already contained in §16.156(b). It would be duplicative to add similar prohibitions in each of the individual program funding categories.

Comment: Section 16.156(b)(1)(C) and (2)(B) Limitations on allocation decrease - These paragraphs specifically note that comprehensive development agreement (CDA) payments will not reduce the allocation of funds to a region. Given the sensitivity in the legislation regarding CDA payments vs. surplus toll revenue payments, we suggest that "surplus toll revenue," not just CDA payments, be referenced in these paragraphs.

Response: The purpose of §16.156(b)(1)(C) and (2)(B) are to reflect the limitation on a funding allocation decrease imposed by Transportation Code, §228.0055 and §228.006. Mr. Morris correctly points out that there is a distinction between payments under a CDA in Transportation Code, §228.0055 and surplus revenue of a state toll project. Revisions to §16.156(b)(1)(C) and (2)(B) now reflect that distinction.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §16.2, §16.4

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop

rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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SUBCHAPTER B. TRANSPORTATION PLANNING

43 TAC §§16.51 - 16.55

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Deputy General Counsel
Texas Department of Transportation
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SUBCHAPTER C. TRANSPORTATION PROGRAMS

43 TAC §§16.101 - 16.106

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.101. Transportation Improvement Program (TIP).

(a) Requirements. Title 23 U.S.C. §134 and 23 C.F.R. Part 450, require the metropolitan transportation planning process to include the development of a transportation improvement program (TIP) for the metropolitan planning area, containing a list of projects that have been approved for development in the near term. The list must be prioritized by project within each funding category as described in §16.105(b) of this subchapter (relating to Unified Transportation Program (UTP)). An approved TIP is then included in the statewide transportation improvement program (STIP) which contains a listing of projects for all areas of the state that are likely to be implemented in that identified four-year period.

(b) Development of transportation improvement program (TIP). The MPO designated for a metropolitan planning area, in cooperation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall develop a TIP and financial plan in accordance with federal requirements. The department will provide an MPO with estimates of available federal and state funds to be used in developing the financial plan in accordance with §16.152 of this chapter (relating to Cash Flow Forecast). The TIP shall cover the metropolitan planning area and shall be approved and amended in accordance with subsection (h) of this section. The TIP shall be updated and approved at least every two years.

(c) Grouping of projects. Projects that are not considered by the department and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, or work type (e.g., minor rehabilitation, preventive maintenance). In nonattainment and maintenance areas, classification must be consistent with the exempt project classifications contained in the EPA conformity regulations.

(d) Projects excluded. The following projects may be excluded from the TIP by agreement between the department and the MPO:

(1) safety projects funded under 23 U.S.C. §402 (highway safety programs) and emergency relief projects, except those involving substantial functional, location, and capacity changes;

(2) planning and research activities, except those activities funded with National Highway System or Surface Transportation Program funds other than those used for major investment studies; and

(3) projects under 23 U.S.C. §104(b)(1), (b)(4), and §144 that are for resurfacing, restoration, rehabilitation, reconstruction, or highway safety improvement, and which will not alter the functional traffic capacity or capability of the facility being improved.

(e) Consistency and conformity.

(1) Relationship to the metropolitan transportation plan (MTP). A project in the TIP must be consistent with the MTP.

(2) Relationship to the statewide long-range transportation plan (SLRTP). A project in the TIP must be consistent with the SLRTP developed under federal law and §16.54 of this chapter (relating to Statewide Long-Range Transportation Plan (SLRTP)).

(3) Relationship to the Clean Air Act and State Implementation Plan. In nonattainment and maintenance areas, a project selected for the TIP must conform to the Clean Air Act (CAA) and the state implementation plan (SIP).

(4) Conformity requirements. The MPO in each urbanized nonattainment and maintenance area will be responsible for preparation of the conformity determination requirements of the CAA and the Environmental Protection Agency (EPA) conformity regulations. The department will be responsible for preparation of the conformity determination requirements in nonattainment and maintenance areas outside of metropolitan planning areas.

(f) Format. The department, in cooperation with the MPOs, will develop a uniform TIP format to produce a uniform statewide transportation improvement program (STIP). The department in consultation with the MPOs may make modifications to the format. The MPOs shall submit electronic and printed copies of their TIPs to the department in this format.

(g) Financial plan. A financial plan that demonstrates consistency with funding reasonably expected to be available during the relevant period shall be developed for TIPs by the MPO in cooperation with the department and public transportation operators.

(h) Transportation improvement program (TIP) approval. The MPO and the governor shall approve the TIP and any amendments. If the governor delegates this authority to the commission, the commission, or if further delegated, the executive director, will approve transportation improvement programs if the executive director finds the TIP has met all federal requirements and the requirements of this subchapter, including satisfaction of the project selection criteria developed for the department's unified transportation program, as set forth in §16.105(d) of this subchapter.

(i) Management. As a management tool for monitoring progress in implementation of the metropolitan transportation plan, the TIP shall identify the criteria and process for prioritizing implementation of transportation plan elements for inclusion in the TIP and any changes in priorities from previous TIPs in accordance with the factors specified in federal regulations and §16.105(d) of this subchapter.

(j) Updating. The frequency and cycle for updating the TIP must be compatible with the statewide transportation improvement program (STIP) development process established by the department and described in §16.103 of this subchapter (relating to Statewide Transportation Improvement Program (STIP)).

(k) Modification.

(1) Amendments. The transportation improvement program (TIP) may be amended consistent with the procedures established in this section for its development and approval with the following stipulations.

(A) An amendment to the TIP is required in attainment areas if there is a change:

(i) adding or deleting a federally funded project in the TIP;

(ii) in the scope of work of a federally funded project;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a federally funded project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year; or

(v) in funding sources or funding availability that forces the addition or deletion of federally funded projects.

(B) An amendment to the TIP is required in nonattainment areas if there is a change:

(i) adding or deleting a project in the TIP;

(ii) in a project's design concept or scope of work;

(iii) in the phase of work (such as the addition of preliminary engineering, construction, or right of way) of a project;

(iv) in the TIP year if the MPO's project selection procedure does not provide for selecting projects from the second, third, or fourth year;

(v) adding Congestion Mitigation and Air Quality funding to a previously approved project; or

(vi) in funding from non-federal funding to any combination of federal funding or federal and state funding, or where the change in funding sources or funding availability forces the addition or deletion of federally funded projects or regionally significant state funded projects.

(C) An amendment to the transportation improvement program (TIP) is not required if there is a change:

(i) in funding sources, except as provided in this subsection;

(ii) in the cost estimate of a project where, unless federal law or regulation specifies a different cost estimate percentage and condition relating to waiver of the amendment requirement for a particular type of project, such change is not greater than 50 percent of the approved cost estimate and the revised cost estimate is less than $1,500,000, and the change in the cost estimate is not caused by a change in the project work scope or limits;

(iii) in the letting date or funding date of a project unless, in nonattainment areas, the change affects conformity;

(iv) in the control section job (CSJ) number of a project unless the change also affects other characteristics of the project or funding that do require an amendment as provided in this subsection; or

(v) that is administrative and does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination.

(2) Conformity requirements. In nonattainment and maintenance areas for transportation related pollutants, a conformity determination must be made on any new or amended TIPs (unless the amendment consists entirely of projects exempt under subsection (c) of this section) in accordance with CAA requirements and the EPA conformity regulations.

(l) Transportation improvement program (TIP) relationship to statewide transportation improvement program (STIP). After approval, the TIP will be included without modification in the STIP except that in nonattainment and maintenance areas, the FHWA and the FTA must make a conformity determination before inclusion. The department

will notify the MPO and appropriate federal agencies when a TIP has been included in the STIP.

(m) TIP public participation. Each MPO will develop a public participation process covering the development of a TIP in accordance with federal regulations. The MPOs shall also use the same procedures in amending the TIP.

(n) Project selection procedures. Under federal regulations, project selection from an approved transportation improvement program (TIP) varies depending on whether a project selected for implementation is located in a transportation management area and what type of federal funding is involved.

(1) General. Project selection procedures must be developed for each metropolitan area and for state projects that lie outside of metropolitan planning areas.

(A) Project agreement. The first year of both the TIP and the statewide transportation improvement program (STIP) constitute an agreed to list of projects for project selection purposes. Project selection may be revised if the apportioned funds, including the highway obligation ceiling and transit appropriations, are significantly more or less than the authorized funds. In such cases, and if requested by the MPO, the department, or the transit operator, a revised agreed to list of projects for project selection purposes may be developed.

(B) Eligibility. Only projects included in the federally approved STIP will be eligible for funding with Title 23 U.S. Code or Federal Transit Act (49 U.S.C. §5307 et seq.) funds.

(2) Project selection in non-transportation management areas. In an area not designated as a transportation management area, the commission or the affected public transportation operator as defined by 23 C.F.R. Part 450, as applicable, in cooperation with the MPO, will select projects to be implemented using federal funds from the approved TIP. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

(3) Project selection in transportation management areas (TMAs). In an area designated as a TMA, an MPO, in consultation with the department and public transportation operators as defined by 23 C.F.R. Part 450, shall select from the approved TIP and in accordance with the priorities of the approved TIP, all Title 23 U.S. Code and Federal Transit Act (49 U.S.C. §5307 et seq.) funded projects, except projects on the National Highway System and projects funded under the bridge, interstate maintenance, safety, and federal lands highways programs. The commission, in cooperation with the MPO, will select projects on the National Highway System and projects funded under the bridge, interstate maintenance, and safety programs. Federal lands highways program projects shall be selected in accordance with 23 U.S.C. §204.

§16.105. 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 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);

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

(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) address travel congestion;

(iii) 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 establish criteria to rank the priority of each project listed in the UTP based on the transportation needs

for the state and the goals identified in paragraph (1)(A) of this subsection. A project will be ranked within its applicable program funding category and classified as tier one, tier two, or tier three for ranking purposes. Major transportation projects will have a tier one classification and be designated as the highest priority projects within an applicable funding category. A project that is designated for development or construction in accordance with the mandates of state or federal law or specific requirements contained in other chapters of this title may be prioritized in a funding category as a designated project in lieu of a tier one, tier two, or tier three ranking.

(3) 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. 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.

(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.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205547
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER D. TRANSPORTATION FUNDING

43 TAC §§16.151 - 16.154, 16.156, 16.160

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

§16.156. Limitation on Allocation of Funds.

(a) Toll project conditions. Neither the commission nor the department may require that a toll project be included in a region's transportation plan or program as a condition for the allocation of funds for the construction of projects in the region.

(b) Limitations on allocation decrease. Neither the commission nor the department may:

(1) revise a formula or otherwise reduce funding as provided in the unified transportation program under §16.105 of this chapter (relating to Unified Transportation Program (UTP)), or a successor program, in a manner that results in a decrease of an allocation to a district or metropolitan planning organization (MPO) because of:

(A) the failure of a region to include toll projects in a region's transportation plan or program;

(B) participation by a political subdivision in the funding of a transportation project in the region, including the use of money collected in a transportation reinvestment zone (TRZ) under Transportation Code, §§222.106 - 222.108; or

(C) payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement, or surplus revenue of a state toll project or system, and used to finance the construction, maintenance, or operation of transportation projects or air quality projects in the region; or

(2) take any other action that would reduce funding allocated to a district or MPO without the prior consent of the MPO because of:

(A) the failure of a region to include toll projects in a region's transportation plan or program; or

(B) receipt by a region of payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement, or surplus revenue of a state toll project or system; or

(C) the need of another district or MPO for increased funding to complete a pending project.

(c) Limitation on reduction of committed funding. If a TRZ is designated in connection with a particular transportation project, neither the commission nor the department may reduce the amount of funding that was committed to the project because of that designation.

(d) Financial assistance for toll projects. Nothing in this section precludes the commission or the department from using funds to

design, develop, finance, construct, maintain, repair, or operate, or assist in the design, development, financing, construction, maintenance, repair, or operation of a toll project in a region.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-201205548
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER E. PROJECT, PERFORMANCE, AND FUNDING REPORTING

43 TAC §§16.201 - 16.204

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §§201.991, 201.994, 201.995, and 201.996 which require the commission to develop rules for implementation of the department's transportation project programming and funding programs.

CROSS REFERENCE TO STATUTE

Transportation Code, §§201.601, 201.6015, 201.620, 201.807 - 201.811, and 201.991 - 201.998.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201205549
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 15, 2012
Proposal publication date: May 11, 2012
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 421, concerning Standards for Certification. Chapter 421 consists of §421.1, Procedures for Meetings, §421.3, Minimum Standards Set by the Commission, §421.5, Definitions, §421.9, Designation of Fire Protection Duties, §421.11, Requirement To Be Certified Within One Year, §421.13, Individual Certificate Holders, §421.15, Extension of Training Period, and §421.17, Requirement to Maintain Certification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205603
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 423, concerning Fire Suppression. Chapter 423 consists of Subchapter A, Minimum Standards For Structure Fire Protection Personnel Certification, §423.1, Minimum Standards for Structure Fire Protection Personnel, §423.3, Minimum Standards for Basic Structure Fire Protection Personnel Certification, §423.5, Minimum Standards for Intermediate Structure Fire Protection Personnel Certification, §423.7, Minimum Standards for Advanced Structure Fire Protection Personnel Certification, §423.9, Minimum Standards for Master Structure Fire Protection Personnel Certification, §423.11, Higher Levels of Certification, §423.13, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter B, Minimum Standards For Aircraft Rescue Fire Fighting Personnel, §423.201, Minimum Standards for Aircraft Rescue Fire Fighting Personnel, §423.203, Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification, §423.205, Minimum Standards for Intermediate Aircraft Rescue Fire Fighting Personnel Certification, §423.207, Minimum Standards for Advanced Aircraft Rescue Fire Fighting Personnel Certification, §423.209, Minimum Standards for Master Aircraft Rescue Fire Fighting Personnel Certification, §423.211, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter C, Minimum Standards For Marine Fire Protection Personnel, §423.301, Minimum Standards for Marine Fire Protection Personnel, §423.303, Minimum Standards for Basic Marine Fire Protection Personnel Certification, §423.305, Minimum Standards for Intermediate Marine Fire Protection Personnel Certification, §423.307, Minimum Standards for Advanced Marine Fire Protection Personnel Certification, and §423.309, Minimum Standards for Master Marine Fire Protection Personnel Certification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205604
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 425, concerning Fire Service Instructors. Chapter 425 consists of §425.1, Minimum Standards for Fire Service Instructor Certification, §425.3, Minimum Standards for Fire Service Instructor I Certification, §425.5,

Minimum Standards for Fire Service Instructor II Certification, §425.7, Minimum Standards for Fire Service Instructor III Certification, §425.9, Minimum Standards for Master Fire Service Instructor III Certification, and §425.11, International Fire Service Accreditation Congress Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205605
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 427, concerning Training Facility Certification. Chapter 427 consists of Subchapter A, On-Site Certified Training Provider, §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel, §427.3, Facilities, §427.5, Apparatus, §427.7, Protective Clothing, §427.9, Equipment, §427.11, Reference Material, §427.13, Records, §427.18, Live Fire Training Evolutions, §427.19, General Information, Subchapter B, Distance Training Provider, §427.201, Minimum Standards for Distance Training Provider, §427.203, Records, §427.209, General Information, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.301, General Provisions for Training Programs--On-Site and Distance Training Providers, §427.303, Training Approval Process for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers, §427.307, On-Site and Distance Training Provider Staff Requirements, Subchapter D, Certified Training Facilities, §427.401, General Provisions for Training Facilities Not Owned by the State of Texas or Operated by a Political Subdivision of the State of Texas, §427.403, Financial Standards, §427.405, Policy Regarding Complaints, §427.407, School Responsibilities Regarding Instructors, §427.409, Advertising, §427.411, Cancellations or Suspensions, and §427.413, Liabilities.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205606
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 429, concerning Minimum Standards for Fire Inspectors. Chapter 429, consists of Subchapter B, Minimum Standards for Fire Inspector Certification, §429.201, Minimum Standards for Fire Inspector Personnel, §429.203, Minimum Standards for Basic Fire Inspector Certification, §429.205, Minimum Standards for Intermediate Fire Inspector Certification, §429.207, Minimum Standards for Advanced Fire Inspector Certification, §429.209, Minimum Standards for Master Fire Inspector Certification, and §429.211, International Fire Service Accreditation Congress (IFSAC) Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205607
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 439, concerning Examinations for Certification. Chapter 439 consists of Subchapter A, Examinations for On-Site Delivery Training, §439.1, Requirements--General, §439.3, Definitions, §439.5, Procedures, §439.7, Eligibility, §439.9, Grading, §439.11, Commission-Designated Performance Skill Evaluations, §439.13, Special Accommodations for Testing, §439.19, Number of Test Questions, Subchapter B, Examinations for Distance Training, §439.201, Requirements--General, §439.203, Procedures, and §439.205, Performance Skill Evaluations.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in

this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205608
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 441, concerning Continuing Education. Chapter 441 consists of §441.1, Objective, §441.3, Definitions, §441.5, Requirements, §441.7, Continuing Education for Structure Fire Protection Personnel, §441.9, Continuing Education for Aircraft Rescue Fire Fighting Personnel, §441.11, Continuing Education for Marine Fire Protection Personnel, §441.13, Continuing Education for Fire Inspection Personnel, §441.15, Continuing Education for Arson Investigator or Fire Investigator, §441.17, Continuing Education for Hazardous Materials Technician, §441.19, Continuing Education for Head of a Fire Department, and §441.21, Continuing Education for Fire Service Instructor.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205609
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 451, concerning Fire Officer. Chapter 451 consists of Subchapter A, Minimum Standards for Fire Officer I, §451.1, Fire Officer I Certification, §451.3, Minimum Standards for Fire Officer I Certification, §451.5, Examination Requirements, §451.7, International Fire Service Accreditation Congress (IFSAC) Seal, Subchapter B, Minimum Standards for Fire Officer II, §451.201, Fire Officer II Certification, §451.203, Minimum Standards for Fire Officer II Certification, §451.205, Examination Requirements, and §451.207, International Fire Service Accreditation Congress (IFSAC) Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205610
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 453, concerning Minimum Standards for Hazardous Materials Technician. Chapter 453 consists of §453.1, Hazardous Materials Technician Certification, §453.3, Minimum Standards for Hazardous Materials Technician Certification, §453.5, Examination Requirements, and §453.7, International Fire Service Accreditation Congress (IFSAC) Seal.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205611
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 491, concerning Voluntary Regulation of State Agencies and State Agency Employees. Chapter 491 consists of §491.1, Election of Components for Voluntary Regulation, §491.3, Documentation, and §491.5, Notification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days fol-

lowing publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205612
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 493, concerning Voluntary Regulation of Federal Agencies and Federal Fire Fighters. Chapter 493 consists of §493.1, Election of Components for Voluntary Regulation, §493.3, Documentation, and §493.5, Notification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205613
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files this notice of intention to review and consider for re-adoption, revision, or repeal Texas Administrative Code, Title 37, Part 13, Chapter 495, concerning Regulation of Nongovernmental Departments. Chapter 495 consists of Subchapter A, Voluntary Regulation of Nongovernmental Departments, §495.1, Application Procedures, §495.3, Notification, and §495.5, Nongovernmental Fire Protection Employees, Subchapter B, Regulation of Nongovernmental Organizations and Personnel, §495.201, Nongovernmental Organizations, §495.203, Nongovernmental Organization Employees, §495.205, Nongovernmental Personnel, and §495.207, Regulation and Certification.

This review will be conducted pursuant to Texas Government Code §2001.039. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these rules continue to exist.

The Texas Commission on Fire Protection, which administers these rules, believes that the reason for adopting the rules contained in this chapter continues to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or by email at info@tcfp.texas.gov. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-201205614
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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Adopted Rule Reviews

Texas Commission on Fire Protection

Title 37, Part 13

The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 401, concerning Practice and Procedure.

The review and re-adoption have been conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6097). The Texas Commission on Fire Protection subsequently proposed changes to Chapter 401 in the proposed rules section of the August 17, 2012, issue of the *Texas Register* (37 TexReg 6245) for an additional 30-day public comment period. The commission received no comments on the proposed amendments. The commission has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 401.

TRD-201205591
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 403, concerning Criminal Convictions and Eligibility for Certification.

The review and re-adoption have been conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6098). The Texas Commission on Fire Protection subsequently proposed changes to Chapter 403 in the proposed rules section of the August 17, 2012, issue of the *Texas Register* (37 TexReg 6251) for an additional 30-day public comment period. The commission received no comments on the proposed amendments. The commission has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 403.

TRD-201205592
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 405, concerning Charges for Public Records.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6098). The Texas Commission on Fire Protection subsequently proposed the repeal of Chapter 405 in the proposed rules section of the August 17, 2012, issue of the *Texas Register* (37 TexReg 6254) for an additional 30-day public comment period. The commission received no comments on the proposed repeal of Chapter 405.

This concludes and completes the review of Chapter 405.

TRD-201205593
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 407, concerning Administration.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6098). The Texas Commission on Fire Protection subsequently proposed the repeal of Chapter 407 in the proposed rules section of the August 17, 2012, issue of the *Texas Register* (37 TexReg 6254) for an additional 30-day public comment period. The commission received no comments on the proposed repeal of Chapter 407.

This concludes and completes the review of Chapter 407.

TRD-201205594
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 431, concerning Fire Investigation.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6098). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 431.

TRD-201205595
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 433, concerning Minimum Standards for Driver/Operator-Pumper.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6099). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 433.

TRD-201205596
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 435, concerning Fire Fighter Safety.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6099). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 435.

TRD-201205597
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 437, concerning Fees.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6099). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 437.

TRD-201205598
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 443, concerning Certification Curriculum Manual.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6099). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 443.

TRD-201205599
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 445, concerning Administrative Inspections and Penalties.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6100). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 445.

TRD-201205600
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 447, concerning Part-Time Fire Protection Employee.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6100). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 447.

TRD-201205601
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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The Texas Commission on Fire Protection (commission) files notice of the completion of review of Texas Administrative Code, Title 37, Part 13, Chapter 449, concerning Head of a Fire Department.

The review was conducted in accordance with Texas Government Code, §2001.039. The commission reviewed and received no comments on the proposed review, which was published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 6100). The Texas Commission on Fire Protection has determined that the reasons for adopting these rules continue to exist.

This concludes and completes the review of Chapter 449.

TRD-201205602
Don Wilson
Executive Director
Texas Commission on Fire Protection
Filed: October 31, 2012

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Department of State Health Services

Title 25, Part 1

The Executive Commissioner of the Health and Human Services Commission (Executive Commissioner), on behalf of the Department of State Health Services (department), adopts the review of Chapter 14, County Indigent Health Care Program, in accordance with Government Code, §2001.039. The proposed rules review was published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3424). Proposed amendments to §§14.104, 14.105, and 14.201 were also published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3333).

In the Adopted Rules Section in this issue of the *Texas Register,* the Executive Commissioner contemporaneously adopts §§14.104, 14.105, and 14.201 with amendments for consistency with Health and Safety Code, §61.008 and §61.0285(a), which were amended by the 82nd Texas Legislature, 2011. The rules became effective on November 13, 2012. The chapter review completion date is November 13, 2012.

TRD-201205578
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 30, 2012

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Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 16, Part 2, Chapter 22, concerning Procedural Rules, pursuant to the Texas Government Code §2001.039, *Agency Review of Existing Rules,* as noticed in the June 1, 2012, issue of the *Texas Register* (37 TexReg 4072). The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.state.tx.us. Project Number 40337, *Rule Review of Chapter 22, Procedural Rules, Pursuant to Texas Government Code §2001.039,* is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the commission's Chapter 22, Procedural Rules, continue to exist. The commission requested specific comments from interested persons on whether the reasons for adopting each section in Chapter 22 continue to exist. In addition, the commission welcomed comments on any modifications that would improve the rules.

The commission's Chapter 22 rules govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to the State Office of Administrative Hearings,

whether instituted by order of the commission or by the filing of an application, including a complaint, petition, or any other pleading.

The commission finds that the reasons for adopting Chapter 22, Procedural Rules, continue to exist and re-adopts these rules without amendments. These procedural rules provide a written system of procedures for practice before the commission, furthering the just and efficient disposition of proceedings, as well as public participation in the decision-making process.

The commission received initial comments on the notice of intention to review from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); CenterPoint Energy Houston Electric, LLC (CenterPoint); and GTE Southwest Incorporated d/b/a Verizon Southwest, Verizon Enterprise Solutions LLC, Verizon Long Distance LLC, MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc. d/b/a Verizon Business Services (collectively, Verizon). The commission received reply comments from Central Telephone Company of Texas, Inc. d/b/a CenturyLink (f/k/a Embarq), United Telephone Company of Texas, Inc. d/b/a CenturyLink (f/k/a Embarq), CenturyTel of San Marcos, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, CenturyTel of Port Aransas, Inc. d/b/a CenturyLink; CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink, CenturyLink Acquisition Company, CenturyLink Solutions, CenturyLink Wholesale, and CenturyLink's Texas IXC affiliate (collectively, CenturyLink); TEXALTEL; and Texas Statewide Telephone Cooperative, Inc. (TSTCI). While there were some suggestions for modifications to specific Chapter 22 rules, no party questioned the continued need for the rules. The parties' comments are summarized by commenter and the commission response addressing these comments is set forth at the end of the summaries.

AT&T stated that the reasons for adopting Chapter 22 continue to exist and recommended re-adoption of the rules. AT&T also requested that the commission amend its Chapter 21 and Chapter 22 rules to bring the rules in line with technological advances and to clarify the practice before the commission. One specific change AT&T sought is that the commission clarify or modify its Chapter 21 and Chapter 22 procedural rules to ensure that non-attorneys do not engage in conduct that would constitute the "practice of law" as defined in Texas Government Code §81.101(a). AT&T noted that the Office of the Attorney General of Texas recently issued an opinion in which the Attorney General concluded that absent a specific provision to the contrary, the general prohibition against the practice of law by non-attorneys applies to administrative hearings before the Texas Education Agency (TEA). AT&T stated the Attorney General opinion further added that a court would have a basis for invalidating a TEA rule allowing a non-attorney to engage in conduct that constitutes the practice of law. In applying the rationale in the Attorney General opinion to commission proceedings, AT&T asserted that non-attorneys are not or should not be permitted to engage in conduct that would constitute the practice of law in administrative proceedings before this commission because the Public Utility Regulatory Act does not expressly provide an exclusion to the general prohibition against the practice of law by non-attorneys. AT&T stated that enforcing this prohibition will not interfere with any individual's ability to represent his or herself in commission dockets, preclude a corporate entity from having a corporate representative appear before the commission, nor affect a company from using a consultant. Instead, AT&T commented, the prohibition will uphold existing law and remove a niche market of consultants that are sometimes retained by sophisticated business customers to engage in conduct that constitutes the practice of law. To achieve these ends, AT&T urged the commission to clarify the proper interpretation of, or if necessary modify, commission Rules §21.5(a) and §22.101(a) to emphasize that under no circumstances may a non-attorney act as an authorized representative of anyone other than himself or herself and not engage in conduct that would constitute the practice of law in commission proceedings. Additionally, AT&T requested that the commission amend commission Rules §21.5(a) and §22.101(a) to clarify that a presiding officer or any other party to a proceeding may request that a representative of a party submit proof of authority to appear on behalf of another person.

AT&T also asked that the commission add a clause to commission Rules §21.7(a) and §22.3(a) to prohibit a person appearing in an administrative hearing before the Commission from knowingly making false, misleading, or abusive statements in pleadings or proceedings or using threatening, obscene, or vulgar language in pleadings or communications among the parties.

AT&T proposed that the commission's rules provide an option for parties to file only an electronic copy of pleadings in accordance with commission-standard formatting, instead of filing multiple paper copies. AT&T argued that the administrative costs to finalize and copy voluminous documents are great. Moreover, AT&T stated, parties have moved towards agreements for electronic service of filings. Filing and serving a single copy in an electronic format would better ensure consistency in the copies filed and served on parties. Should the commission continue to require paper copies, AT&T alternatively requested a reduction of the number of hard copies required under commission Rules §21.31(c)(2) - (5), and (7) and §22.71(c)(1) - (14) in order to minimize the administrative burden on filing parties.

AT&T recommended that commission Procedural Rule §22.72(e) be modified to require the signatory of a pleading/document to provide an e-mail address. AT&T asserted that the overwhelming majority of today's communication and transmittal of information between parties is done electronically and AT&T's proposed change would be consistent with what is already required in commission Rule §21.33(e).

AT&T further recommended that commission Rules §21.35(b) and §22.74(b) be amended to permit service by electronic mail, stating such an amendment is consistent with the State Office of Administrative Hearings' (SOAH) procedural rules and parties' current practice. AT&T also proposed that the same rules be modified to accept electronic mail "sent messages" or an electronic mail delivery certificate as *prima facie* evidence of service.

AT&T also requested that a sentence be added to commission Rules §21.41(c) and §22.77(c) to prohibit the presiding officer from ruling on a motion before the expiration of the time for response allotted unless the motion states that it is unopposed or an emergency situation exists.

AT&T asked that commission Rules §21.75(a)(1) and (b)(2) and §22.123(a)(2) clarify that the date of issuance of an order be the date that the presiding officer signs it because there have been occasions where an order was signed on one day and filed on another, potentially leading to confusion as to due dates for motions or appeals. AT&T further requested these rules be amended to permit parties to serve by electronic mail all motions for clarification, motions for reconsideration, and appeals.

Regarding discovery, AT&T commented that commission Rule §22.144(b)(2) should be modified to permit requests for information to be served on all parties by electronic mail. AT&T asserted electronic mail is the primary, most efficient, and eco-friendly means of transmitting documents in today's business world. Additionally, AT&T requested that commission Rules §21.95(k)(3) and §22.144(h) be modified to eliminate the requirement to file responses. AT&T stated this change would be consistent with SOAH's procedural rules. AT&T also asked that commission Rule §22.144(c)(2)(F) be changed to require the responding party, not the authorized representative or attorney, to make and sign responses to requests for information.

AT&T further proposed that this subsection should clarify that responses to requests for inspection, production, or admission need not be made and signed under oath. AT&T also recommended that the time period for objections to requests for information, set forth in commission Rule §22.144(d), should be lengthened from 10 calendar days to 20 calendar days to coincide with the deadline for responding to requests for information. AT&T asserted such a change would mirror Texas Rules of Civil Procedure (TRCP) Rule 193.2(a) which states a party must make an objection to written discovery in writing - either in the response or in a separate document - within the time for response. AT&T argued this change would not, in and of itself, elongate the discovery process and could instead substantially reduce discovery disputes and objections. If the commission adopts AT&T's recommendation to lengthen the period for objecting to requests for information, AT&T further recommended that the commission also lengthen the time period for filing motions to compel from the current five working days to 10 calendar days. Furthermore, AT&T commented that commission Rule §22.144, concerning privilege logs, should be amended to mirror TRCP Rule 193.3. AT&T stated that unlike the commission rule, TRCP Rule 193.3 does not require parties to automatically file an index of documents alleged to be privileged in each and every instance; instead a party asserting a privilege in state court is only required to indicate that information or documents have been withheld and what privilege is being asserted. After receiving such a statement, the discovering party may then serve a request that the withholding party identify what was withheld, to which the withholding party must respond by describing what was withheld and specifically how the asserted privilege applies. AT&T asserted its suggested change will not cause much of a change in commission practice because parties in commission proceedings routinely agree to waive the requirement to file a privilege log and in the rare event parties cannot resolve their differences over a privileged document, the *in camera* inspection procedure set forth in commission Rule §22.144(g) can be utilized to resolve the dispute.

AT&T also commented that the lists of sanctionable conduct set forth in commission Rules §21.71(b) and §22.161(b) should be expanded to include failing to comport with the Standards of Conduct for Parties set forth in commission Rules §21.7(a) and §23.3(a) respectively. AT&T asserted that a similar conclusion was reached by the arbitrators in a prior commission proceeding.

Verizon commented that Chapter 22 remains necessary and should be re-adopted, but specific modifications should be made to improve administrative efficiency for the commission and the parties that appear before it. Specifically, Verizon asserted that commission Rules §22.71(c) and §22.144(h) should be modified to permit electronic filing and electronic service of pleadings and other documents. Verizon stated that the current paper filing requirements not only waste paper, but require the commission and the parties to spend a great deal of time and effort to print, copy, deliver, file, and manage paper documents. Verizon posited that documents are now routinely scanned and transmitted in Acrobat-readable portable document format (.pdf format) and the commission should encourage parties to file documents electronically. Verizon also requested that the commission modify commission Rule §22.74(b) to permit electronic service of pleadings and documents, and modify commission Rule §22.144(b)(2) to permit electronic service of discovery requests. Verizon noted that when documents are voluminous, or a case involves many parties, the service methods to which parties are currently limited can require reams of paper in addition to the administrative resources needed to copy and prepare the documents. Verizon stated that in practice, parties often agree to electronic service and the commission's service and discovery rules should be modified to reflect this more efficient approach. To facilitate electronic service, Verizon also recommended that the commission change commission Rule §22.72(e) to require that a party signing a pleading or document provide his or her e-mail address.

Regarding the discovery process, Verizon commented that, under the commission's current procedural rules, a party requesting information may need to file a motion to compel to preserve its rights even though it may turn out that the response made subject to objection is acceptable. Verizon asserted that if the requesting party could review the objections along with the responses, the requesting party would be in a much better position to judge whether to dispute the sufficiency of the response. Therefore, Verizon stated, to reduce the number of motions to compel and make the process more efficient, parties should be permitted to file their objections and responses to discovery at the same time. In addition, Verizon recommended the commission amend commission Rule §22.144 to no longer require the filing of a privilege log within two working days of filing an objection based on privilege. Verizon asserted that under TRCP Rule 193.3 and common practice before the commission, parties do not automatically provide privilege logs and instead the receiving party may explore whether the assertion of privilege is valid through subsequent discovery requests.

CenterPoint did not comment on whether the reasons for adopting Chapter 22, Procedural Rules, continue to exist but did propose that the commission incorporate, into commission Rules §§22.141 - 22.144, the discovery rules used by all civil litigants in Texas courts: Rules 190 through 200 of the Texas Rules of Civil Procedure. CenterPoint stated the TRCP discovery rules have served the State of Texas well and would modernize existing commission processes without reducing the ability of parties to obtain the information they really need to assess or try cases. CenterPoint asserted that most of the TRCP discovery rules already reflect current commission practice and would therefore be little more than documenting that practice in the commission's procedural rules. CenterPoint also commented that adoption of TRCP Rule 190 would be critical to modernizing existing practice. CenterPoint stated that TRCP Rule 190 permits parties, under the default discovery procedures, to ask an unlimited number of requests for admissions and requests for documents, but limits parties to 25 interrogatories (including subparts) without permission of the court. TRCP Rule 190 also permits the court to craft a more customized discovery control plan. CenterPoint commented that a reasonable limitation on discovery makes sense and would make a tremendous difference in cases before the commission. CenterPoint stated that in its experience some parties before the commission need an incentive for litigants to consider whether they need to ask a question before asking it; CenterPoint asserted that hundreds of discovery requests in its 2010 rate case were unnecessary and served to increase CenterPoint's litigation costs, which are ultimately borne by consumers. CenterPoint noted that while most of the TRCP discovery rules could be adopted without controversy, there may be some provisions that the commission would rather not adopt or would prefer to adopt with revisions. Therefore, CenterPoint proposes that the commission give some general guidance at an open meeting and then convene a workshop to develop an actual rule amendment.

TEXALTEL replied in opposition to AT&T's suggested change to the rules regarding who may practice before the commission. TEXALTEL stated that AT&T did not cite any examples where the commission's present rules violate law or court precedent, and instead AT&T cited a few anecdotal situations where non-attorneys have acted inappropriately. TEXALTEL noted that there are remedies that exist today if the unlawful practice of law is believed to be occurring. Further, TEXALTEL expressed concern that AT&T's proposed modifications may lead to questions or challenges of customs that have evolved over time, such as allowing out of state counsel to participate with local counsel and allowing company representatives who are not attorneys

represent their companies. TEXALTEL concluded that AT&T's suggested amendments could be counterproductive.

CenturyLink replied that it supports all of AT&T's proposed changes to the commission's procedural rules. CenturyLink stated that a general benefit to the majority of AT&T's proposed changes is that they would more closely align the Commission's procedural rules with either the TRCP and/or procedural rules of other state utility commissions. CenturyLink asserted that because many of the utilities regulated by the commission operate on a multi-state basis, these utilities typically employ legal and regulatory employees responsible for multiple states. CenturyLink commented that AT&T's proposed changes would result in aligning the commission's procedural rules with what is in place in other states, resulting in more efficiency for many Texas-regulated employees. The greater consistency, CenturyLink claimed, would also result in a much more developed jurisprudence from which to interpret and apply the commission's rules.

CenturyLink also provided further, specific comments regarding two AT&T proposals. CenturyLink supported AT&T's recommendation to modify commission Rules §21.5(a) and §22.101(a) to clearly prohibit the unauthorized practice of law by non-lawyers before the commission. CenturyLink stated it is extremely frustrating to be required by utility commissions in numerous other states to gain admission *pro hac vice* from the other states' supreme courts while in Texas just about anyone can appear as an authorized representative before this commission. CenturyLink asserted it is particularly frustrating that a non-lawyer may appear before this commission because of such person's lack of familiarity with, or understanding of procedural rules and governing law, as well as issues with professional conduct. CenturyLink stated that the Attorney General opinion cited by AT&T says that only the Legislature can authorize non-lawyers to practice before any Texas administrative agency and PURA does not contain a grant of authority for the commission to permit non-attorney to engage in what is obviously the practice of law. CenturyLink argued that in fact PURA §14.056 explicitly limits party representation to the party's attorney or to the party itself. CenturyLink posited that the current practice of non-lawyers appearing before the commission is not lawful and commission Rules §21.05(a) and §22.101(a) should be revised, as proposed by AT&T, in order to comply with governing law, and to maintain a level of professionalism in the practice before the commission that is on par with the sophisticated and complex matters over which the commission has authority.

CenturyLink also expressed support for AT&T's proposals to revise the commission procedural rules so that a document is considered filed when it is received electronically by the commission's interchange system. Further, CenturyLink commented that even if the commission will consider a document to be filed when the electronic copy is received (but still requires hard copies to be filed), and particularly if the commission will continue to consider a document to be filed only when a hard copy is received, at a minimum the commission should reduce the number of copies that are required to be filed. CenturyLink stated that in addition to the six states mentioned in AT&T's comments that only require an electronic copy to be filed, numerous other states generally only require an electronic filing for non-confidential material or require both electronic filing and five or less hard copies of any non-confidential material. CenturyLink posited that this commission was one of the first state utility commissions in the country to implement an electronic filing system, but this system has not evolved to the extent of other state utility commission filing system so that electronic filing is the only official method of filing and unnecessary paper copies are eliminated.

TSTCI replied that it disagrees with AT&T's proposed revisions to commission Rules §21.5(a) and §22.101(a) that would result in preventing non-attorneys from acting as authorized representatives in commission proceedings. TSTCI stated that while it was not providing legal arguments, TSTCI wanted to point out the commission's record on this issue, as well as the practical and administrative ramifications of AT&T's proposal. TSTCI commented that AT&T proposed a fairly major change to the commission procedural rules that would impact how the commission has conducted proceedings without AT&T demonstrating why this change is needed. TSTCI observed that the Attorney General opinion cited in AT&T's comments concluded that the general prohibition against the practice of law by non-attorneys applied to administrative hearings before the TEA. TSTCI also argued that none of the examples of noncompliance with commission orders or rules by non-attorney representatives involved a non-attorney representing a small incumbent local exchange company (ILEC), yet AT&T's proposed changes would definitely have adverse effects on small ILECs conducting business before the commission. TSTCI asserted AT&T's proposed revisions would restrict the option for representation before the commission and drive up the costs for small ILECs who are often represented by consultants, accountants, or engineering professionals in commission proceedings, and most of these proceedings in which small ILECs participate are uncontested, not requiring representation by an attorney. TEXALTEL stated small ILECs rely a great deal on their consultants, accountant, and engineers to represent the small ILECs in minor, non-contentious commission proceedings and small ILECs lack the resources to keep attorneys on staff. TSTCI asserted that if a small ILEC is involved in a commission proceeding that becomes contentious, the small ILEC's consultant or other professional typically calls upon an attorney to handle the case, however the majority of commission proceedings involving the small ILECs can be handled by the small ILEC's consultant or other professional. TSTCI agreed with TEXALTEL's reply comment that AT&T's proposal would disrupt customs that have evolved over time and increase regulatory costs for small companies at a time when they can ill afford it. Furthermore, TSTCI asserted that earlier this year, as well as in 2007, the commission did not accept similar AT&T-proposed rule revisions to restrict representation; TSTCI asserted that circumstances have not changed since those prior commission proceedings. TSTCI also stated that in its 2007 comments in another commission project, TSTCI cited a failed attempt in the 79th legislative session to restrict representation before the commission to licensed attorneys. TSTCI concluded that there is nothing positive to be gained from the proposed change, while there would be significant negative consequences for small Texas ILECs.

Commission Response

As described in the notice of publication, the amendment of any particular section of Chapter 22 may be initiated under a separate proceeding.

The commission appreciates the thoughtful comments on this chapter. Some of the amendments suggested in the comments might improve the commission's procedural rules, but would require further consideration, including additional notice and public input, before adoption. Furthermore, several of the suggested amendments would affect rules for which there are similar rules in the commission's rules in its Chapter 21, Interconnection Agreements for Telecommunications Service Providers. In order to maintain uniformity of practice before the commission, it may be appropriate to amend both sets of rules at the same time, in a separate rulemaking proceeding (or proceedings). The commission will consider initiating such a proceeding (or proceedings) to amend this chapter and similar provisions of its other procedural rules, based on the benefits that could be derived from the amendments and other relevant factors.

The commission has completed the review of 16 TAC Chapter 22, Subchapters A - O, pursuant to Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in Chapter

22 continue to exist. Therefore, the commission re-adopts Chapter 22, Procedural Rules, in its entirety, pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (West 2007 & Supp. 2012), which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission; and Texas Government Code §2001.039 (West 2008), which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act §14.002 and §14.052; and Texas Government Code §2001.039.

16 TAC CHAPTER 22. PROCEDURAL RULES

TRD-201205568
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 29, 2012

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Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the re-adoption of 43 TAC Chapter 26, concerning Regional Mobility Authorities, Chapter 30, concerning Aviation, and Chapter 31, concerning Public Transportation.

This review and re-adoption have been conducted in accordance with Government Code, §2001.039. Notice of this rule review was provided in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6702). The department received comments in support of the review and re-adoption of Chapter 26 from counsel representing Alamo Regional Mobility Authority, Cameron County Regional Mobility Authority, Camino Real Regional Mobility Authority, Central Texas Regional Mobility Authority, Grayson County Regional Mobility Authority, and North East Texas Regional Mobility Authority. There were no comments regarding the review and re-adoption of Chapters 30 and 31. The Texas Transportation Commission has determined that the reasons for adopting the specified rules continue to exist.

This concludes the review of Chapters 26, 30, and 31.

TRD-201205550
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: October 26, 2012

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC Chapter 25--Preamble

	Raise the HCAP to:	Effective before the summer of:
Proposed Rule	$5,000	2013
	$7,000	2014
	$9,000	2015
Case 1	$4,000	2013
	$5,000	2014
	$6,000	2015
Case 2	$4,500	2013
	$6,000	2014
	$7,500	2015

Figure: 34 TAC §9.4308(g)

Ground for Objection Number	Category	Property ID Number	Grounds for Objection
1	A	9586	**Inaccurate Finding:** PTAD's total appraised value of the property **Inaccuracy of Finding:** $10,000 land value assigned by PTAD is too high **Accurate Finding/Change Sought by Protest:** appraised value of property should be $55,000.00 by decreasing land value to $5,000.00 **Basis for Claim of Inaccuracy:** MLS data regarding vacant land sales reflects lower land value than that assigned by PTAD **Documentary Evidence Supporting Allegation of Inaccuracy:** copies of MLS data regarding vacant land sales
2	A	9586	**Inaccurate Finding:** PTAD's total appraised value of the property **Inaccuracy of Finding:** effective age of 30 assigned by PTAD is too low **Accurate Finding/Change Sought by Protest:** effective age should be 45 **Basis for Claim of Inaccuracy:** review of property attributes reflects a higher effective age than that assigned by PTAD **Documentary Evidence Supporting Allegation of Inaccuracy:** CAD appraisal card reflecting property attributes; photographs of property
3	G	**TXO01 012345**	**Inaccurate Finding:** PTAD's appraised value of property **Inaccuracy of Finding:** PTAD's oil production volume as of the January 1, 2011 appraisal date is incorrect. **Accurate Finding/Change Sought by Protest:** The oil production volume as of the January 1, 2011 appraisal date is 2,935 barrels per month. **Basis for Claim of Inaccuracy:** the oil production volume averaged 2,935 barrels per month during the 4th quarter of 2010 **Documentary Evidence Supporting Allegation of Inaccuracy:** Historical oil production data in tabled format, oil production volume calculations and an oil decline rate graph depicting the 2,935 barrels per month production volume as of the January 1 appraisal date
4	J	54321	**Inaccurate Finding:** PTAD's value is too high. **Inaccuracy of Finding:** The future projected NOI is too high. **Accurate Finding/Change Sought by Protest:** NOI should be $1,900,000 **Basis for Claim of Inaccuracy:** Prior income shows a declining NOI. **Documentary Evidence Supporting Allegation of Inaccuracy:** FERC reports for past three years

Figure: 34 TAC §9.4308(h)(7)

Ground for Objection Number	Category	Grounds for Objection
1	SR	**Correction Request:** revise preliminary findings in accordance with an updated School District Report of Property Value **Documentary Evidence Supporting Allegation of Inaccuracy:** School District Report of Property Value (Form 50-108) with a recap that includes a breakdown of value by category, a breakdown of exemptions and other value deductions, and a breakdown by land class of agricultural and timber land acreage and value
2	SR	**Correction Request:** revise preliminary findings in accordance with an updated Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled **Documentary Evidence Supporting Allegation of Inaccuracy:** report providing substantially the same information set forth in Report on Value Lost Because of the School Tax Limitation on Homesteads of the Elderly/Disabled (Form 50-253)
3	SR	**Correction Request:** revise preliminary findings in accordance with an updated Report on Value Lost Because of Value Limitations Under Tax Code Chapter 313 **Documentary Evidence Supporting Allegation of Inaccuracy:** Report on Value Lost Because of Value Limitations Under Tax Code Chapter 313 (Form 50-767) with a listing by account number of the market value, exemptions, and taxable value of the property subject to the value limitation
4	SR	**Correction Request:** revise preliminary findings concerning value lost due to participation in tax increment financing **Documentary Evidence Supporting Allegation of Inaccuracy:** Report on Value Lost Because of School District Participation in Tax Increment Financing (From 50-755) with a listing of each property in the TIF zone identified by account number and showing the appraised and taxable value for the PVS year and appraised and taxable value for the zone's base year
5	SR	**Correction Request:** revise preliminary findings concerning deferred taxes pursuant to Tax Code §33.06 or §33.065 **Documentary Evidence Supporting Allegation of Inaccuracy:** listing by account of unpaid deferred taxes that does not include penalties or interest
6	SR	**Correction Request:** revise preliminary findings concerning agricultural land acreage **Documentary Evidence Supporting Allegation of Inaccuracy:** recap reflecting agricultural land acreage breakdown

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 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 11/05/12 - 11/11/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/05/12 - 11/11/12 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-201205582
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 31, 2012

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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 December 10, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on December 10, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Aledo Midway Corporation dba Midway Food Store; DOCKET NUMBER: 2012-1294-PST-E; IDENTIFIER: RN101568129; LOCATION: Aledo, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $2,251; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aqua Utilities, Incorporated dba Aqua Texas, Incorporated; DOCKET NUMBER: 2012-1296-PWS-E; IDENTIFIER: RN101721702; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §§290.110(e)(2) and (5), 290.111(h)(2) and (11) and 290.122(f), by failing to submit Surface Water Monthly Operating Reports (SWMORs) to the executive director by the tenth day of the month following the end of the reporting period and by failing to post public notice to the customers served by the facility of the failure to submit the SWMORs for the months of February - July 2011; PENALTY: $3,277; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(3) COMPANY: C & R WATER SUPPLY, INCORPORATED; DOCKET NUMBER: 2012-0595-MWD-E; IDENTIFIER: RN102763208; LOCATION: Cut-N-Shoot, Montgomery County; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014285001, Permit Conditions Number 2.d. and Effluent Limitations and Monitoring Requirements Number 1 and 4, and TWC, §26.121(a), by failing to properly operate and maintain the wastewater treatment plant resulting in a discharge of floating solids into the receiving stream and also by failing to comply with permitted effluent limits; 30 TAC §217.6(c), by failing to submit to the TCEQ a summary transmittal letter that includes, at a minimum, the project name, plan and specifications, prior to installing floats and a pump; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014285001, Operational Requirements Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater; PENALTY: $18,438; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: CAMPBELL OIL COMPANY; DOCKET NUMBER: 2012-1468-PST-E; IDENTIFIER: RN106441827; LOCATION: Newton, Newton County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regu-

lated substance into the UST system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: City of Dodd City; DOCKET NUMBER: 2012-1383-MWD-E; IDENTIFIER: RN101608867; LOCATION: Dodd City, Fannin County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(17) and §319.1 and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010538001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring report (DMR) parameter data for pH for the monitoring periods ending August 31, 2011 and September 30, 2011; and 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0010538001, Monitoring and Reporting Requirements Number 1, by failing to timely submit DMRs by the 20th day of the following month for the monitoring periods ending December 31, 2011 - March 31, 2012; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Electra; DOCKET NUMBER: 2012-1285-MWD-E; IDENTIFIER: RN101212611; LOCATION: Electra, Wichita County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0010020001, Effluent Limitations and Monitoring Requirements Number 1, 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $4,850; Supplemental Environmental Project offset amount of $3,880 applied to Texas Association of Resource Conservation and Development Areas, Incorporated - Household Hazardous Waste Clean-up; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(7) COMPANY: City of Gunter; DOCKET NUMBER: 2012-0276-MWD-E; IDENTIFIER: RN101917904; LOCATION: Gunter, Grayson County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010569001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $7,667; Supplemental Environmental Project offset amount of $6,134 applied to Sludge Removal, Re-Stabilization of Pond Embankments, and Install Deeper Baffles; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Lewisville; DOCKET NUMBER: 2012-1269-WQ-E; IDENTIFIER: RN101212090; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of pollutants into or adjacent to any waters in the state; and TWC, §26.039(b), by failing to provide timely notification to the TCEQ of accidental discharges which cause pollution; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: City of Troup; DOCKET NUMBER: 2012-1315-MWD-E; IDENTIFIER: RN102182326; LOCATION: Cherokee County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010304001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: $5,425; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Country Club Retirement Community, L.P.; DOCKET NUMBER: 2012-0448-MWD-E; IDENTIFIER: RN105460646; LOCATION: Whitney, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014871001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; and 30 TAC §§305.125(1) and (17), 319.4 and 319.7(d) and TPDES Permit Number WQ0014871001, Monitoring and Reporting Requirements Number 1, by failing to submit results at the intervals specified in the permit and also by failing to timely submit the monthly discharge monitoring reports for the monitoring periods ending September 30, 2011 and October 31, 2011; PENALTY: $7,060; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: DALE LOWDEN EXCAVATING, INCORPORATED; DOCKET NUMBER: 2012-1531-WQ-E; IDENTIFIER: RN106424187; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of sediment into or adjacent to water in the state; PENALTY: $1,876; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(12) COMPANY: ENIGMA ENTERPRISES, INCORPORATED dba Star Food; DOCKET NUMBER: 2012-1054-PST-E; IDENTIFIER: RN102249711; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (C) and (5)(B)(ii), by failing to timely renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of ownership change; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; PENALTY: $9,048; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Hardeep Singh dba Paris Mart; DOCKET NUMBER: 2012-0128-PST-E; IDENTIFIER: RN103936068; LOCATION: Paris, Lamar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: J & H PLANT CONSTRUCTION, INCORPORATED; DOCKET NUMBER: 2012-1522-PST-E; IDENTIFIER: RN101805240; LOCATION: White Oak, Gregg County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and TWC, §26.3467(a), by failing to timely

renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,362; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: JIMMIE HAHN PARTNERSHIP, LTD.; DOCKET NUMBER: 2012-1021-IWD-E; IDENTIFIER: RN100690874; LOCATION: Brenham, Washington County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG111120, Part III Permit Requirements, Section A, by failing to comply with permitted effluent limits; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: KELSOE TRACTOR COMPANY, INCORPORATED dba Kelsoe Oil Johnny Joes 1; DOCKET NUMBER: 2012-1481-PST-E; IDENTIFIER: RN103052817; LOCATION: Denton, Denton County; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to verify that the owner or operator of an underground storage tank (UST) system possessed a valid, current TCEQ delivery certificate prior to depositing a regulated substance into the UST system; PENALTY: $1,231; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Knife River Corporation - South; DOCKET NUMBER: 2012-1292-IWD-E; IDENTIFIER: RN102163128; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System General Permit Number TXG110868, Part III Permit Requirements, Section A, by failing to comply with the permitted effluent limitations; PENALTY: $4,800; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: M.A.A.A. ENTERPRISES, INCORPORATED dba Clinton Food Market; DOCKET NUMBER: 2012-1216-PST-E; IDENTIFIER: RN100647593; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $5,414; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Oscar S. Reyes; DOCKET NUMBER: 2012-1265-OSI-E; IDENTIFIER: RN104442124; LOCATION: Cotulla, La Salle County; TYPE OF FACILITY: on-site sewage facility (OSSF) installation business; RULE VIOLATED: 30 TAC §285.61(4) and Texas Health and Safety Code, §366.051(a), by failing to ensure that an authorization to construct had been obtained prior to beginning construction of an OSSF; PENALTY: $500; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(20) COMPANY: PADMA CORPORATION dba Step N Go; DOCKET NUMBER: 2012-1258-PST-E; IDENTIFIER: RN102469681; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,450; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: RCF Investments, Incorporated dba The Brock Junction; DOCKET NUMBER: 2012-1250-PST-E; IDENTIFIER: RN101555282; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: ROCK CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2012-1372-PWS-E; IDENTIFIER: RN105472757; LOCATION: Arlington, Palo Pinto County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter total chlorine throughout the distribution system at all times; 30 TAC §290.46(f)(3)(A)(iv), by failing to maintain records of the dates dead end mains were flushed; 30 TAC §290.110(c)(4)(A) and (d)(1)(C)(ii), by failing to monitor the disinfectant residual throughout the distribution system at least once every seven days using a test kit that employs a diethyl-p-phenylendiamine colorimetric method; 30 TAC §290.121(a) and (b), by failing to compile an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; and 30 TAC §290.46(q)(1), by failing to rescind a boil water notification in a manner that is similar to the original notice; PENALTY: $780; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Saeb Kutob dba Arp Food Store; DOCKET NUMBER: 2012-1595-PST-E; IDENTIFIER: RN105187041; LOCATION: Arp, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Shawn & Aydin Enterprises, Incorporated dba Shawn's Shop N Go; DOCKET NUMBER: 2012-1428-PST-E; IDENTIFIER: RN103020822; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $5,670; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: STAR TOUCH TECHNOLOGIES, INCORPORATED dba Dew Truck Stop; DOCKET NUMBER: 2012-0618-PST-E; IDENTIFIER: RN102779170; LOCATION: Teague, Freestone County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,625; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: TEXAS NEW HORIZON, INCORPORATED dba Merito Food Mart; DOCKET NUMBER: 2012-1078-PST-E; IDENTIFIER: RN101881084; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2012-0299-PST-E; IDENTIFIER: RN103012084; LOCATION: Cedar Hill, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: $1,875; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Thomas Carranza dba Trinity Crossing; DOCKET NUMBER: 2012-1041-PWS-E; IDENTIFIER: RN105639298; LOCATION: Livingston, Polk County; TYPE OF FACILITY: convenience store with a restaurant and a public water supply; RULE VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.46(f)(2), (3)(A)(i)(III) and (ii)(III), by failing to maintain a record of water works operation and maintenance activities that can be made accessible for review during inspections; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device on the well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.45(d)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.39(c) and (h)(1) and THSC, §341.035(a)(2) and (c), by failing to receive written approval of plans and specifications from the executive director prior to beginning construction of a new public drinking water supply system; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's well; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: Traversari USA LLC dba Texaco 155; DOCKET NUMBER: 2012-1310-PST-E; IDENTIFIER: RN102026242; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months, and vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $3,605; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: WOODLAND OAKS UTILITY, LP formerly known as WOODLAND OAKS UTILITY COMPANY, INCORPORATED; DOCKET NUMBER: 2012-1283-MWD-E; IDENTIFIER: RN102184090; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014166001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits for ammonia nitrogen; PENALTY: $1,775; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201205574
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2012

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Enforcement Orders

An agreed order was entered regarding Cargill Meat Solutions Corporation, Docket No. 2011-0650-AIR-E on October 10, 2012 assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator, TCEQ Enforcement Division (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Huntsville, Docket No. 2012-0202-MWD-E on October 10, 2012 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Faisal Hemani dba Star Mart, Docket No. 2012-0289-PST-E on October 10, 2012 assessing $2,629 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator, TCEQ Enforcement Division (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pacer LLC dba South Central 1st Gas Beer & Wine, Docket No. 2012-0393-PST-E on October 10, 2012 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, TCEQ Enforcement Division (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Way Quick Shopping, Inc., Docket No. 2012-0406-PST-E on October 10, 2012 assessing $6,525 in administrative penalties with $1,304 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator, TCEQ Enforcement Division (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tommy Haltom, Docket No. 2012-0409-AIR-E on October 10, 2012 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator, TCEQ Enforcement Division (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Al-Nor Corporation dba Pinemont Grocery, Docket No. 2012-0515-PST-E on October 10, 2012 assessing $4,007 in administrative penalties with $801 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dia-Den Ltd., Docket No. 2012-0516-MWD-E on October 10, 2012 assessing $2,124 in administrative penalties with $424 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W B Diamond Investments, Inc dba Petro City, Docket No. 2012-0521-PST-E on October 10, 2012 assessing $5,129 in administrative penalties with $1,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, TCEQ Enforcement Division (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SONIA AND BPSC INC. dba Handy Stop, Docket No. 2012-0525-PST-E on October 10, 2012 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, TCEQ Enforcement Division (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding IOWA PARK READY-MIX, INC., Docket No. 2012-0526-IWD-E on October 10, 2012 assessing $2,730 in administrative penalties with $546 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding METHAB CORPORATION, INC. dba Rainbow Quick Stop, Docket No. 2012-0584-PST-E on October 10, 2012 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator, TCEQ Enforcement Division (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D INTERNATIONAL, INC. dba Handi Stop 97, Docket No. 2012-0609-PST-E on October 10, 2012 assessing $2,350 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The University of Texas MD Anderson Cancer Center, Docket No. 2012-0628-PST-E on October 10, 2012 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Corpus Christi Army Depot, Docket No. 2012-0631-AIR-E on October 10, 2012 assessing $2,425 in administrative penalties with $485 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, TCEQ Enforcement Division (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Pilsner dba Pilsner's Place, Docket No. 2012-0660-PWS-E on October 10, 2012 assessing $501 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jake Hess dba Country Corner, Docket No. 2012-0664-PST-E on October 10, 2012 assessing $3,737 in administrative penalties with $747 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ERAMCO ENTERPRISES INC dba H&H Food Store, Docket No. 2012-0668-PST-E on October 10, 2012 assessing $2,379 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLASS TEXACO DISTRIBUTORS, INC. dba Philip Texaco 2, Docket No. 2012-0698-PST-E on October 10, 2012 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NOBLE INVESTMENTS, LLC dba C Store 12, Docket No. 2012-0715-PST-E on October 10, 2012 assessing $2,550 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator, TCEQ Enforce-

ment Division (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hong Chau dba Laterna Villa Mobile Home Park, Docket No. 2012-0767-PWS-E on October 10, 2012 assessing $969 in administrative penalties with $193 deferred.

Information concerning any aspect of this order may be obtained by contacting Epi Villareal, Enforcement Coordinator, TCEQ Enforcement Division (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Great Sahara Ventures, LLC dba Oasis Action Snax, Docket No. 2012-0781-PST-E on October 10, 2012 assessing $4,734 in administrative penalties with $946 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KAISING, INC. dba Coastal Express, Docket No. 2012-0793-PST-E on October 10, 2012 assessing $3,290 in administrative penalties with $658 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED BIG D, INC. dba Big D Food Store, Docket No. 2012-0826-PST-E on October 10, 2012 assessing $2,862 in administrative penalties with $572 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLAKIA & SINGH LLC dba Harvey's, Docket No. 2012-0830-PST-E on October 10, 2012 assessing $6,720 in administrative penalties with $1,344 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Water Co., L.L.C. dba Oakshores Community, Docket No. 2012-0919-PWS-E on October 10, 2012 assessing $125 in administrative penalties with $25 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Carrollton, Docket No. 2012-0925-PST-E on October 10, 2012 assessing $4,313 in administrative penalties with $862 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator, TCEQ Enforcement Division (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GUR DIYA LLC dba Food and Fuels, Docket No. 2012-0926-PST-E on October 10, 2012 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator, TCEQ Enforcement Division (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of McGregor, Docket No. 2012-0940-PWS-E on October 10, 2012 assessing $1,357 in administrative penalties with $271 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator, TCEQ Enforcement Division (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Houston, Docket No. 2012-0980-PST-E on October 10, 2012 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator, TCEQ Enforcement Division (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Longview Independent School District, Docket No. 2012-0985-PST-E on October 10, 2012 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator, TCEQ Enforcement Division (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kendall County Water Control and Improvement District No. 1, Docket No. 2012-1008-PWS-E on October 10, 2012 assessing $54 in administrative penalties with $10 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fisher, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Center, Docket No. 2012-1055-MWD-E on October 10, 2012 assessing $7,110 in administrative penalties with $1,422 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donna P. Arnold dba The Fillin Station, Docket No. 2012-1108-PST-E on October 10, 2012 assessing $5,755 in administrative penalties with $1,151 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Katy Independent School District, Docket No. 2012-1328-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Landmark Industries, Ltd., Docket No. 2012-1337-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Craigs Dirt Service LLC, Docket No. 2012-1350-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sergio Hinojosa, Docket No. 2012-1442-WOC-E on October 10, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dale T. Landrum, Docket No. 2012-1443-WOC-E on October 10, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Eric M. Herrera, Docket No. 2012-1444-WOC-E on October 10, 2012 assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Felipe Najera, Docket No. 2012-1445-AIR-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Tyler Pounds Regional Airport, Docket No. 2012-1488-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding City of College Station, Docket No. 2012-1489-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Kevin S. Hogg, Docket No. 2012-1501-WQ-E on October 10, 2012 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator, TCEQ Enforcement Division (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Overton, Docket No. 2009-0452-MWD-E on October 19, 2012 assessing $42,642 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G. W. Haston Family Trust, Docket No. 2010-0262-PST-E on October 19, 2012 assessing $8,925 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bailey, Docket No. 2010-1826-MWD-E on October 19, 2012 assessing $73,650 in administrative penalties with $73,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Soney Joseph dba Race Runner 3, Docket No. 2011-0561-PST-E on October 19, 2012 assessing $20,608 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Atlanta, Docket No. 2011-0582-MWD-E on October 19, 2012 assessing $12,350 in administrative penalties with $12,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Choice Exploration, Inc., Docket No. 2011-0718-AIR-E on October 19, 2012 assessing $17,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna M. Treadwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Florence, Docket No. 2011-0854-MWD-E on October 19, 2012 assessing $13,107 in administrative penalties with $2,621 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Olke Andries Jongsma dba Amelia Dairy, Docket No. 2011-0909-AGR-E on October 19, 2012 assessing $10,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Colon Enterprises, Inc. dba My-T-Quick, Docket No. 2011-0928-PST-E on October 19, 2012 assessing $16,262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MFMK, INC. dba Phillips 66 Food Mart, Docket No. 2011-1029-PST-E on October 19, 2012 assessing $17,519 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Malone, Docket No. 2011-1189-MWD-E on October 19, 2012 assessing $23,144 in administrative penalties with $23,144 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WEST YUKON ESTATES LLC, Docket No. 2011-1255-MWD-E on October 19, 2012 assessing $19,513 in administrative penalties with $18,313 deferred.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SCHOPPE AUTO SUPPLY, INC., Docket No. 2011-1401-MLM-E on October 19, 2012 assessing $6,562 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNI Corporation dba Broadway Food Mart, Docket No. 2011-1631-PWS-E on October 19, 2012 assessing $11,176 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James Grzann dba Beers Mechanical Repair, Docket No. 2011-1669-WQ-E on October 19, 2012 assessing $2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Wayne Robinson, Docket No. 2011-1678-MWD-E on October 19, 2012 assessing $12,210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jogesh Amin dba Stop N Save, Docket No. 2011-1754-PST-E on October 19, 2012 assessing $23,554 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hill Country Harbor, L.P., Docket No. 2011-1970-MWD-E on October 19, 2012 assessing $22,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chung Nguyen dba Hilltop Village Mobile Home Park, Docket No. 2011-2082-MWD-E on October 19, 2012 assessing $58,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A & M BUSINESS INC dba Aggies Food Store, Docket No. 2011-2088-PST-E on October 19, 2012 assessing $11,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JX Nippon Chemical Texas Inc. dba Nisseki Chemical of Texas, Docket No. 2011-2250-AIR-E on October 19, 2012 assessing $54,117 in administrative penalties with $10,823 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Railcar Services - Roscoe, Inc., Docket No. 2012-0060-AIR-E on October 19, 2012 assessing $44,000 in administrative penalties with $8,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Khurram Adnan dba Store T 24, Docket No. 2012-0105-PST-E on October 19, 2012 assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RETAIL INVESTORS OF TEXAS, LTD. dba Market Basket Express 47, Docket No.

2012-0106-PST-E on October 19, 2012 assessing $23,366 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Anderson Columbia Co., Inc., Docket No. 2012-0112-AIR-E on October 19, 2012 assessing $8,439 in administrative penalties with $1,687 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fort Worth, Docket No. 2012-0151-MWD-E on October 19, 2012 assessing $15,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Follett, Docket No. 2012-0172-PWS-E on October 19, 2012 assessing $1,278 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Wietzikoski dba Raymonds Shell, Docket No. 2012-0191-PST-E on October 19, 2012 assessing $10,992 in administrative penalties with $2,198 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cadre Material Products, LLC, Docket No. 2012-0206-MLM-E on October 19, 2012 assessing $12,057 in administrative penalties with $2,410 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oak Valley Mobile Home Park LLC dba Oak Ridge Mobile Home Park, Docket No. 2012-0266-PWS-E on October 19, 2012 assessing $838 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Colorado River Authority, Docket No. 2012-0291-MWD-E on October 19, 2012 assessing $6,413 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG Gas Processing, L.P., Docket No. 2012-0294-AIR-E on October 19, 2012 assessing $5,462 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Richard Valadez dba Ricking V Hides and Skins, Docket No. 2012-0316-IHW-E on October 19, 2012 assessing $6,078 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bravo Natural Gas, LLC, Docket No. 2012-0326-AIR-E on October 19, 2012 assessing $16,840 in administrative penalties with $3,368 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Japan International Corp dba City Star Shell, Docket No. 2012-0359-PST-E on October 19, 2012 assessing $13,703 in administrative penalties with $2740 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2012-0384-AIR-E on October 19, 2012 assessing $13,125 in administrative penalties with $2,625 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grunewald Sandblasting, Inc., Docket No. 2012-0400-MLM-E on October 19, 2012 assessing $14,126 in administrative penalties with $2,825 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walker County, Docket No. 2012-0427-PST-E on October 19, 2012 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Springtown, Docket No. 2012-0449-MWD-E on October 19, 2012 assessing $30,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brenda Cunningham Byrd and Cozy Lounge, LLC dba Cozy Lounge, Docket No. 2012-0490-PWS-E on October 19, 2012 assessing $2,708 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North San Saba Water Supply Corporation, Docket No. 2012-0557-PWS-E on October 19, 2012 assessing $21,079 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Commerce, Docket No. 2012-0566-MWD-E on October 19, 2012 assessing $12,225 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Ranger, Docket No. 2012-0573-MWD-E on October 19, 2012 assessing $9,970 in administrative penalties with $1,994 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2012-0598-AIR-E on October 19, 2012 assessing $11,040 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FASTRAC FOOD STORE'S INC. dba Fastrac 2, Docket No. 2012-0626-PST-E on October 19, 2012 assessing $16,100 in administrative penalties with $3,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MURPHY OIL USA, INC. dba Murphy USA 6979, Docket No. 2012-0627-PST-E on October 19, 2012 assessing $8,975 in administrative penalties with $1,795 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Glenn E. Galloway, Docket No. 2012-0645-PST-E on October 19, 2012 assessing $9,187 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond S Cattle Company, Docket No. 2012-0672-IWD-E on October 19, 2012 assessing $13,250 in administrative penalties with $2,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JC SHELL, INC, Docket No. 2012-0676-PST-E on October 19, 2012 assessing $8,405 in administrative penalties with $1,681 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Motor Transport, Inc., Docket No. 2012-0727-PST-E on October 19, 2012 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Braunfels Utilities, Docket No. 2012-0771-MWD-E on October 19, 2012 assessing $7,750 in administrative penalties with $1,550 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Rural Water Supply Corporation, Docket No. 2012-0878-MWD-E on October 19, 2012 assessing $7,612 in administrative penalties with $1,522 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Houston Pole Line, L.P., Docket No. 2012-0929-PST-E on October 19, 2012 assessing $9,446 in administrative penalties with $1,889 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grand Ranch Treatment Company, Docket No. 2012-0956-MWD-E on October 19, 2012 assessing $8,155 in administrative penalties with $1,631 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201205587
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2012

♦ ♦ ♦

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2012.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 10, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ALIA ENTERPRISES, INC. d/b/a Monroe Texaco; DOCKET NUMBER: 2011-2216-PST-E; TCEQ ID NUMBER: RN101832921; LOCATION: 8450 Gulf Freeway, Houston, Harris County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to immediately investigate a suspected release of a regulated substance; PENALTY: $8,770; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Gruver; DOCKET NUMBER: 2011-2342-MWD-E; TCEQ ID NUMBER: RN101920254; LOCATION: 0.6 miles west of State Highway 15 and approximately 0.8 miles east of State Highway 136, southeast of Gruver, Hansford County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number WQ0010751001, Effluent Limitations and Monitoring Requirements Numbers 1, 3, and 6; PENALTY: $11,965; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: HERSHANA BAY, INC d/b/a Lavon Food Mart; DOCKET NUMBER: 2012-0041-PST-E; TCEQ ID NUMBER: RN101434330; LOCATION: 2376 Lavon Drive, Garland, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Jose G. Nieto d/b/a Nieto's Service Station 1; DOCKET NUMBER: 2012-0366-PST-E; TCEQ ID NUMBER: RN102887171; LOCATION: 1021 Hooks Avenue, Donna, Hidalgo County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $2,639; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Krebs Utilities, Inc. d/b/a Estates Water Corp; DOCKET NUMBER: 2010-1752-UTL-E; TCEQ ID NUMBER: RN101196897; LOCATION: 2144 Lakeside Drive, Crosby, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §290.39(o)(1), §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $436; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Krebs Utilities, Inc. d/b/a K Lake Terrace; DOCKET NUMBER: 2010-1753-UTL-E; TCEQ ID NUMBER: RN101261568; LOCATION: two miles east of Beltway 8 on Garrett Road, Crosby, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §290.39(o)(1), §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $452; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Krebs Utilities, Inc. d/b/a Roving Meadows Water System; DOCKET NUMBER: 2010-1835-UTL-E; TCEQ ID NUMBER: RN101268977; LOCATION: 4006 Farm-to-Market 1942 Road A, Crosby, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §13.1395(b)(2) and 30 TAC §290.39(o)(1), §291.162(a) and (j), by failing to adopt and submit to the executive director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $508; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Leonard Denton; DOCKET NUMBER: 2012-0762-PWS-E; TCEQ ID NUMBER: RN101283018; LOCATION: Highway 281, north of Johnson City, Blanco County; TYPE OF FACILITY:

public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit Disinfectant Level Quarterly Operating Reports (DLQORs) to the executive director each quarter by the tenth day of the month following the end of the quarter; Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii), by failing to collect routine distribution water samples for coliform analysis for the months of July and August 2011; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,322; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(9) COMPANY: Paula Reagan d/b/a Lucky Roadhouse BBQ; DOCKET NUMBER: 2012-0849-PWS-E; TCEQ ID NUMBER: RN106096514; LOCATION: 9520 Harmonson Road, Justin, Denton County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notice of the failure to sample for the months of April, May, June, July, and August 2011; 30 TAC §290.106(e), by failing to provide the results of annual nitrate monitoring to the TCEQ's executive director; 30 TAC §290.106(e), by failing to provide the results of triennial metal and mineral monitoring to the TCEQ's executive director; and THSC, §341.033(d) and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), by failing to collect routine distribution waste samples for coliform analysis for the months of September - December 2011 and by failing to provide public notice of the failure to sample in September 2011; PENALTY: $2,810; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Raymon E. Windham d/b/a Deer Run Water System; DOCKET NUMBER: 2012-0871-PWS-E; TCEQ ID NUMBER: RN101439867; LOCATION: 100 County Road 198, two and one-half miles southeast of Bangs, Brown County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.113(e), by failing to report the results of Stage 1 Disinfectant Byproducts monitoring to the executive director; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.106(e) and §290.113(e), by failing to report the results of annual nitrate/nitrite and Stage 1 Disinfectant Byproducts monitoring to the executive director; and 30 TAC §290.51(b) and TWC, §5.702, by failing to pay all annual Public Health Service fees, for fiscal year 2012, including any associated late fees and penalties; PENALTY: $1,832; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Tarif Al-Rousan d/b/a A Motion Food Mart; DOCKET NUMBER: 2011-1581-PST-E; TCEQ ID NUMBER: RN101548881; LOCATION: 829 South Corinth Street Road, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,550; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Tommy Slama d/b/a Lionbacker Drive Inn; DOCKET NUMBER: 2012-0433-PST-E; TCEQ ID NUMBER: RN102713401; LOCATION: 1108 West Lake Bardwell Drive, Ennis, Ellis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail gasoline sales; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the piping associated with the UST system; PENALTY: $2,635; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: UNIFIED AFFILIATES, LLC d/b/a New Metro Food Mart; DOCKET NUMBER: 2012-0927-PST-E; TCEQ ID NUMBER: RN101723856; LOCATION: 703 West Rhapsody Drive, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,634; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Virgil Ponce; DOCKET NUMBER: 2011-1744-IHW-E; TCEQ ID NUMBER: RN106192644; LOCATION: 10800 Oak Lake Road, Bryan, Brazos County; TYPE OF FACILITY: site that involves the management and/or the disposal of industrial solid waste; RULES VIOLATED: 30 TAC §335.4(1), by failing to prevent the disposal of industrial solid waste in such a manner that would cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to water in the state; PENALTY: $15,000; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-201205575
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2012

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2012.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 10, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Absolute Fuels, LLC; DOCKET NUMBER: 2012-0813-IHW-E; TCEQ ID NUMBER: RN105117253; LOCATION: 3120 Country Road 247, Littlefield, Lamb County; TYPE OF FACILITY: biodiesel manufacturing plant; RULES VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; PENALTY: $1,312; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(2) COMPANY: Ernesto Garcia; DOCKET NUMBER: 2012-0859-MSW-E; TCEQ ID NUMBER: RN105880603; LOCATION: 10638 County Road 407, La Feria, Cameron County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW at the site; PENALTY: $1,275; STAFF ATTORNEY: Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Lion Sarmiento DBA Unique Toyz; DOCKET NUMBER: 2012-0601-AIR-E; TCEQ ID NUMBER: RN106084403; LOCATION: 1505 North Timberline Drive, Lufkin, Angelina County; TYPE OF FACILITY: automotive paint and repair shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b), and 30 TAC §116.110(a), by failing to obtain authorization to operate a paint and body shop; PENALTY: $1,050; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201205576
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2012

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Notice of Opportunity to Comment on Order Vacating Default Order

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Order Vacating Default Order (Order) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the Order, the commission shall allow the public an opportunity to submit written comments on the proposed Order. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2012.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an order if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Order is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the Order should be sent to the attorney designated for the Order at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 10, 2012.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the Order and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the Order should be submitted to the commission in **writing.**

(1) COMPANY/COMPANIES: Krebs Utilities, Inc. d/b/a Estates Water Corp, d/b/a K Lake Terrace, and d/b/a Roving Meadows Water System; DOCKET NUMBERS: 2010-1752-UTL-E, 2010-1753-UTL-E, and 2010-1835-UTL-E; TCEQ ID NUMBERS: RN101196897, RN101261568, and RN101268977; LOCATIONS: 2144 Lakeside Drive (RN101196897), two miles east of Beltway 8 on Garrett Road (RN101261568), and 4006 Farm-to-Market 1942 Road A (RN101268977), Crosby, Harris County; TYPE OF FACILITY: public water systems; ACTION: Default Orders issued against Krebs Utilities, Inc. d/b/a Estates Water Corp, d/b/a K Lake Terrace, and d/b/a Roving Meadows Water System approved by the commission on July 20, 2011, will be vacated upon a finding that answers were filed on May 4, 2011, requesting hearings regarding these enforcement matters. Pursuant to TWC, §5.102 and 30 TAC §70.5, the commission has the authority to grant such relief that it deems equitable and just; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201205577
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 30, 2012

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Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Limited Scope Permit Major Amendment (Proposed) Permit No. 1428A

APPLICATION. The City Wichita Falls, P.O. Box 1431, Wichita Falls, Wichita County, Texas 76307, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Type I Municipal Solid Waste (MSW) Limited Scope Major Permit Amendment for authorization to accept additional nonhazardous feedstock for the Compost Facility located at the City of Wichita Falls Landfill. The new feedstock proposed will be for composting nonhazardous industrial sewage sludge, paper mill boiler sludge and ash, and tire chips as bulking material. The facility is located at 10984 Wiley Road, Wichita Falls, Wichita County, Texas 76307. The TCEQ received the application on September 17, 2012. The permit application is available for viewing and copying at the Wichita Falls City Hall, 1300 7th Street, Room 402, Wichita Falls, Wichita County, Texas 76301-2305. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=33.883171&lng=-98.664994&zoon=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; 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 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 will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

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 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. Further information may also be obtained from the City of Wichita Falls at the address stated above or by calling Mr. Russell Schreiber, P.E., Director of Public Works, at (940) 761-7477.

TRD-201205586
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2012

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Notice of Water Quality Applications

The following notices were issued on October 19, 2012 through October 26, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 344 has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013483001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at 13220 E. Sam Houston Parkway N., approximately 2,500 feet east of Beltway 8 along the south boundary of Harris County Municipal Utility District No. 344, which is approximately 10,000 feet north of Mount Houston Parkway and 9,200 feet south of the Missouri Pacific Railroad in Harris County, Texas 77044.

TERRA VERDE UTILITY COMPANY LLC has applied for a renewal of TPDES Permit No. WQ0014624001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 22602 Hegar Road approximately two miles north and 120 feet east of the intersection of Farm-to-Market Road 2920 and Hegar Road in Waller County, Texas 77447.

VALERO REFINING TEXAS LP which operates a petroleum refinery, has applied for a major amendment to TPDES Permit No. WQ0000535000 to increase the effluent limitations for all limited parameters at Outfall 001 based on projected production increases and authorize the discharge of additional utility wastewaters (reverse osmosis reject water and water softening wastewaters via Outfall 001. The current permit authorizes the discharge of boiler blowdown, cooling tower blowdown, treated process wastewater and process area stormwater at a daily average flow not to exceed 2,150,000 gallons per day (Interim Phase) and 2,880,000 gallons per day (Final Phase) via Outfall 001; post-first flush stormwater runoff, steam condensate, fire water, cooling tower overspray, and heat exchanger cooling water backwash on an intermittent and flow variable basis via Outfall 002; uncontaminated stormwater runoff, steam condensate, fire water, and hydrostatic test water on an intermittent and flow variable basis via Outfalls 003, 005, 006, and Outfall 007; and non-process area stormwater, steam condensate, fire water, cooling tower overspray, heat exchanger cooling water backwash, and hydrostatic test water on an intermittent and flow variable basis via Outfall 008. The facility is located at 9701 Manchester, 0.5 miles east of Loop 610, one-mile north of State Highway 225, and bordered on the north by the Houston Ship Channel, in the City of Houston, Harris County, Texas 77012. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

LUMINANT GENERATION COMPANY LLC which operates Martin Lake Steam Electric Station, has applied for a renewal of TPDES Permit No. WQ0001784000, which authorizes the discharge of once-through cooling water and previously monitored effluents (treated domestic wastewater via internal Outfall 101, low volume wastes from the wastewater recycling plant via Outfall 201, storm water from lignite storage area via Outfall 301, low volume wastewater and storm water runoff from lignite storage area, solid waste disposal area, and yard drains via Outfall 401, bottom ash transport water, and wastewater from the solid waste disposal area via Outfall 501) at a daily average flow not to exceed 3,045,000,000 gallons per day via Outfall 001. The facility is located at 8850 Farm-to-Market Road 2658, adjacent to Martin Lake, on the east side of Farm-to-Market Road 2658, and approximately five miles southwest of the City of Tatum, Rusk and Panola Counties, Texas 75691.

KIRBY INLAND MARINE LP, which operates the Kirby Gate 5 Barge Cleaning facility, has applied for a new permit, proposed TPDES Permit No. WQ0004992000, to authorize the discharge of treated tank barge wash water and boiler blowdown on an intermittent and flow variable basis with a daily maximum flow of 100,000 gallons per day. The facility is located at 16538 DeZavalla Road in the City of Channelview, Harris County, Texas 77530.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495126, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately 1,320 feet north of the intersection of State Highway 249 and Mills Road and approximately 2.0 miles southeast of the intersection of State Highway 249 and Farm-to-Market Road 1960 in Harris County, Texas 77064.

CITY OF TERRELL has applied for a renewal of TPDES Permit No. WQ0010747001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 101 Mount Hebron Road, Terrell, approximately one mile south of the intersection of Interstate Highway 20 and Highway 34, south of the City of Terrell in Kaufman County, Texas 75160.

PRESTONWOOD FOREST UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011089001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 14210 Prestonwood Forest Drive, approximately 3,100 feet east of the intersection of Cypress Creek and State Highway 249, 9 miles southeast of the City of Tomball in Harris County, Texas 77070.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0011824002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located at 15342 Grant Road, 3,000 feet east and 1,300 feet south of the intersection of Telge Road and Grant Road in Harris County, Texas 77429.

CLP SPLASHTOWN LLC has applied for a renewal of TPDES Permit No. WQ0011886001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located approximately 1,600 feet northeast of the intersection of Interstate Highway 45 and Louetta Road, near Spring in Harris County, Texas 77373.

KLEIN INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012224001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 11,000 gallons per day. The facility is located at 19020 Doerre Road at the Klein Independent School District Transportation Center, 2,000 feet east and 2,000 feet north of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas 77379.

TRINITY SO GP LLC has applied for a renewal of Permit No. WQ0012650001 to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 25,000 gallons per day. The facility is located at 4330 Pin Oak Lane, on the north side of Spring-Steubner Road, approximately 2.5 miles west of the intersection of Interstate Highway 45 and Spring-Steubner Road in Harris County, Texas 77389.

RICHARDS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013527001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located at 9477 Panther Drive, approximately 550 feet north of Farm-to-Market Road 149 and 1,800 feet west of the Chicago, Rock Island and Pacific Railroad in Grimes County, Texas 77873.

TIDWELL WASTEWATER UTILITY LLC has applied for a renewal of TPDES Permit No. WQ0014320001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility will be located at 8911 East Sam Houston Parkway North in Houston, approximately 1,700 feet west of East Beltway 8 and approximately 2,500 feet north of Tidwell Road in Harris County, Texas 77044.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 391 has applied for a renewal of TPDES Permit No. WQ0014327001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 14820 1/2 Mueschke Road, approximately 4,000 feet northwest of the intersection of U.S. Highway 290 and Mueschke Road in Harris County, Texas 77433.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 10 has applied for a major amendment to TPDES Permit No. WQ0014643001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 94,500 gallons per day to a daily average flow not to exceed 100,000 gallons per day. The facility is located at 15839 1/2 Whisper Woods Drive, on the east side of Barker Cypress Road, 4,600 feet north of Huffmeister Road in Harris County, Texas 77249.

NATIONAL OILWELL VARCO LP has applied for a renewal of TPDES Permit No. WQ0014856001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 9015 Sheldon Road, approximately 0.3 mile south of the intersection of Highway 90 (Crosby Freeway) and Sheldon Road in Harris County, Texas 77049.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201205585
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 31, 2012

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October 2012 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft October 2012 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft October 2012 WQMP update may be found on the commission's Web site located at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on December 11, 2012. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201205573
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 30, 2012

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following projects during the period of October 3, 2012, through October 10, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on October 31, 2012. The public comment period for this project will close at 5:00 p.m. on November 30, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Nueces County Coastal Parks

Location: The project is located on Stedman Island, along and adjacent to the southwest shoreline of the Channel to Aransas Pass and on the north side of State Highway (SH) 361, approximately 2.3 miles east of Aransas Pass, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Estes, Texas. NAD 83, Latitude: 27.890539 North; Longitude: -97.110310 West.

Project Description: The applicant proposes to amend their existing permit, SWG-2010-00635, which was issued on March 31, 2011 and authorized the improvement to the existing marina and park facility with the replacement of the existing bulkhead, removal of six existing piers, and grading of the existing parking area to increase the elevation. The proposed amendment would authorize a new lighted fishing pier which will consist of an 8- by 170-foot walkway with an 8- by 92-foot L-head that will be approximately 4 feet above the water with lighting to aid in recreational fishing, as well as lighting for navigation safety. The proposed amendment would also authorize the restoration of the existing boat ramp through the removal of approximately 39 cubic yards of rock debris and seagrass wrack from a 528-square-foot area, located below the mean high water and within the existing boat ramp, using a mechanical dredge. Lastly, the proposed amendment

would also authorize the replacement of an existing derelict pier associated with the boat ramp with a new boat dock to act as a loading or attendant pier for boaters. The new loading dock will be 4 by 45 feet long and constructed 1.5 foot above mean high water. The applicant did not propose to mitigate for the proposed project because no fill impacts are associated with this request.

CMP Project No.: 12-0891-F1

Type of Application: U.S.A.C.E. permit application #SWG-2010-00635 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: The Nature Conservancy

Location: The project site is located in Corpus Christi Bay, on the northern portion of Shamrock Island, west of State Highway 361, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. NAD 83, Latitude: 27.762770 North; Longitude: -97.168689 West.

Project Description: The applicant proposes to repair an existing breach by placing approximately 600 cubic yards of imported sand fill along the ridge alignment across the existing breach, over 0.28 acres of jurisdictional area. The breach fill is proposed to be constructed to +3 feet NAVD88 with a crest width of 10 feet and side slopes of 10H:1V. The breach closure will be constructed from sand material transported by barge to the east side of the island. No dredging is anticipated for access to the site. The sand will be placed in the breach and worked into place with a bulldozer or similar equipment. It is expected that construction will take no more than four weeks from the time of mobilization. Construction of the sand breach closure will take place outside of bird nesting season (i.e. approximately March 1 to September 1). Additionally, after construction of the sand breach closure, the applicant proposed to plant the area with approximately 0.10 acre of emergent vegetation. A planting permit will be obtained from Texas Parks and Wildlife Department prior to planting. Sprigs of smooth cordgrass and/or black mangrove will be planted at elevations 0 to 2.5 feet NAVD88 to match the existing spatial distribution on Shamrock Island.

CMP Project No.: 12-0892-F1

Type of Application: U.S.A.C.E. permit application #SWG-2011-00854 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201205583
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 31, 2012

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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 projects during the period of October 11, 2012, through October 26, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on October 31, 2012. The public comment period for this project will close at 5:00 p.m. on November 30, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation - Corpus Christi District

Location: The project site is located between 135 and 166 feet from the bulkhead of the Port Aransas ferry landing; and between 135 and 166 feet from the bulkhead of the Harbor Island ferry landing within the Corpus Christi Ship Channel, Port Aransas, Nueces County, Texas. The project can be located on the USGS quadrangle map entitled: Port Aransas, Texas. NAD 83, Latitude: 27.8402 North; Longitude: 97.0693 West, and Latitude: 27.8436 North; Longitude: 97.0700 West.

Project Description: The applicant proposes to install five 19-pile clusters and five 23-pile clusters approximately 135 feet and 166 feet, respectfully, from the end of the existing Harbor Island ferry bulkhead in order to accommodate new ferry boats and improve the safety of the existing ferry landing. The piling clusters farthest from the bulkhead would be approximately 605 feet from the center of the main ship channel. No mitigation is planned for this project. The application has stated that they have avoided and minimized the environmental impacts by placing minimum amount of dolphin structures necessary to maintain adequate public safety at the two ferry landings. The project site conditions are currently open water and a concrete bulkhead with infrastructure which is being utilized as a ferry landing for vehicular traffic travelling between the communities or Port Aransas and Aransas Pass, Texas.

CMP Project No.: 13-0943-F1

Type of Application: U.S.A.C.E. permit application #SWG-2003-02165 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Coastal Bend Bays and Estuaries Program

Location: The project is located in Corpus Christi Bay, along the southwestern shoreline of Indian Point, in Portland, San Patricio County, Texas. The project can be located on the USGS quadrangle map entitled: Portland, TX. NAD 83, Latitude: 27.851497 North; Longitude: -97.354722 West.

Project Description: The applicant proposes to a construct a combination of graded riprap breakwaters and graded riprap revetment for shoreline protection as a form of bank stabilization. The purpose of the project is to provide protection to a demonstrably eroding shoreline containing estuarine wetlands and seagrass. The applicant has stated that erosion along the shoreline of Indian Point Park can be significantly

reduced with the addition of shoreline protection that shields the bank and adjacent wetlands from waves caused by wind generated across Corpus Christi Bay. As waves impact the structure, they will break and dissipate energy. The reduction in wave energy mitigates erosion along the shoreline and provides shelter for seagrass. The shoreline protection includes a combination of both segmented breakwaters and revetment. The total length of shoreline protection structure is 2,800 feet. This length includes 8 segmented breakwaters and a revetment. The breakwaters would be placed a minimum of 20 feet away from the nearest seagrasses. Each breakwater would be between 200 and 500 feet in length with approximately 30-foot gaps between each segment. The structures would impact approximately 2 acres of non-vegetated bay bottom in which approximately 3 to 4 cubic yards per linear foot of segmented breakwater graded riprap will be placed below mean high water (MHW) and approximately 2 to 3 cubic yards per linear foot of revetment graded riprap will be placed below MHW. The applicant has proposed to have the option of protecting the shoreline in the southernmost portion of the project area with either riprap revetment or two additional off-shore breakwaters.

CMP Project No.: 13-0934-F1

Type of Application: U.S.A.C.E. permit application #SWG-2012-00591 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

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 Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201205584
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 31, 2012

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated November 14, 2011, by Sidney Bouse, Licensed State Land Surveyor, associated with Texas General Land Office, Miscellaneous Easement No. ME 20120113. The survey delineates a portion of the littoral boundary of the Samuel Parr Survey, Abstract 162, along the line of Mean Higher High Water at the confluence of Galveston Bay and Horseshoe Lake located at an existing bridge on French Town Road, near the southwest end of Port Bolivar, on Bolivar Peninsula, Galveston County.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5223, email bill.o'hara@glo.texas.gov, or fax (512) 475-4619.

TRD-201205588
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 31, 2012

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Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Texas Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey described as follows:

A Coastal Boundary Survey, dated March 12, 2012, by William E. Merten, Licensed State Land Surveyor, associated with Texas General Land Office, Lease No. SL20120039. The survey delineates the line of Mean Higher High Water on the right and left banks of Robinson Bayou, within the Miguel Muldoon Two League Grant, Abstract 18, from the south right-of-way of F.M. 270 southward to Abilene Street in the City of League City, Galveston County.

This survey is intended to provide pre-project baseline information related to an erosion response activity on coastal public lands. An owner of uplands adjoining the project area is entitled to continue to exercise littoral rights possessed prior to the commencement of the erosion response activity, but may not claim any additional land as a result of accretion, reliction, or avulsion resulting from the erosion response activity.

For a copy of this survey or more information on this matter, contact Bill O'Hara, Director of the Survey Division, Texas General Land Office, by phone at (512) 463-5223, email bill.o'hara@glo.texas.gov, or fax (512) 475-4619.

TRD-201205589
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 31, 2012

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on November 29, 2012, at 9:00 a.m., to receive public comment on proposed payment rates for the assisted living/residential care (AL/RC) services under the Community Based Alternatives (CBA) program, CBA Personal Care III services (PCIII) and Residential Care (RC) program. The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective January 1, 2013.

The public hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin,

Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disabilities Act (ADA) accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. HHSC proposes to decrease the facility cost area rates for the CBA AL/RC, CBA PCIII services and RC programs to reflect the most recent increase in Federal Supplemental Security Income (SSI) payments in accordance with the rate setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(c)(2)(B) for the CBA AL/RC service and 1 TAC §355.503(c)(2)(D) for the CBA PCIII service.

Briefing package. A briefing package describing the proposed reimbursement rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on November 13, 2012. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written and oral comments. Written comments regarding the payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, HHSC Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201205569
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 29, 2012

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective February 1, 2013.

The purpose of the proposed amendment is to define the reimbursement methodology for the Preadmission Screening and Resident Review (PASRR) Level II evaluation that assesses individuals for mental illness (MI) and/or intellectual disabilities or related conditions.. The proposed amendment also details the reimbursement methodology for customized adaptive aids in nursing facilities.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $3,226,443 for federal fiscal year (FFY) 2013 consisting of $2,163,660 in federal funds and $1,062,783 in state general revenue. For FFY 2014, the estimated additional annual expenditure is $4,979,195 consisting of $3,095,694 in federal funds and $1,883,501 in state general revenue.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201205580
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: October 30, 2012

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Heart of Texas Council of Governments

Request for Statement of Qualifications - Solid Waste Management Research

The Heart of Texas Council of Governments (HOTCOG) is seeking to contract with a competent firm that has experience working in Research of Solid Waste Management, especially as related to multi-county regions, small-urban and rural areas, and projects located in Texas.

Request for Statement of Qualifications packages may be obtained by contacting Angela Hughes, Environmental Planner, HOTCOG, 1514 South New Road, Waco, TX 76711, (254) 292-1890. Packages will not be faxed, but can be emailed. The sole authority to enter into contracts rests with HOTCOG. All Statements must be received by close of business December 20, 2012. Proposals received after the specified date and time will not be considered.

TRD-201205572
Angela Hughes
Environmental Development Planner
Heart of Texas Council of Governments
Filed: October 30, 2012

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Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that: In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for initial approval of a limitation on the growth of certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows: Sec. 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Sec. 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

(1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows: the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less personal contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2011. The largest component of Texas personal income is wage and salary disbursements, estimated at $535.4 billion during calendar 2011. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated $797.6 billion in calendar year 2011.

In deriving Texas total personal income, two adjustments are made to total earnings by place of work. Personal contributions for social insurance contributions, principally social security payroll taxes paid by employees and self-employed, are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be $1,067.0 billion for calendar year 2011.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past fifteen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources listed alphabetically: (1) IHS Global Insight, (2) Moody's Analytics, (3) Perryman Group, (4) Texas Comptroller of Public Accounts and (5) University of North Texas Center for Economic Development & Research. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used. See the following issues of the *Texas Register:* (5 TexReg 4272), (7 TexReg 3727), (9 TexReg 5219), (11 TexReg 4590), (13 TexReg 4599), (15 TexReg 6876), (17 TexReg 7702), (19 TexReg 9053), (21 TexReg 10919), (23 TexReg 11472), (25 TexReg 11735), (27 TexReg 10977), (29 TexReg 10612), (31 TexReg 9641), (33 TexReg 9109), and (35 TexReg 10081).

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2014-15 biennium over the 2012-13 biennium. These forecasts range from 1.0871 or 8.71 percent to 1.1221 or 12.21 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2014-15 biennium.

Table 4 briefly outlines the sources and dates for the Texas personal income growth rates presented in Table 3.

Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2012-13 Biennium

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2012-13 biennium, the base biennium, is the second item of information to be determined by the Legislative Budget Board. As of October 30th, 2012 the staff estimates this amount to be $70,362,366,836. This item multiplied by the estimated rate of growth of Texas personal income from the 2012-13 biennium to the 2014-15 biennium produces the limitation on appropriations for the 2014-15 biennium under Article VIII, Section 22, of the Texas Constitution.

Calculating the 2014-15 Limitation

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2014-15 biennium may be illustrated by selecting a growth rate and applying it to the 2012-13 appropriations base. This is shown in Table 5, using the lowest and highest growth rates shown in Table 3. Depending on which personal income growth rate is adopted, current estimates suggest a limitation on 2014-15 biennial appropriations from tax revenue not dedicated by the Constitution ranging from $76.5 billion to $79.0 billion.

Method of Calculating 2012-13 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As stated above, LBB staff estimates the amount of appropriations from state tax revenue not dedicated by the Constitution in the 2012-13 biennium to be $70,362,366,836. This section details the sources of information used in this calculation.

Total appropriations for the 2012-13 biennium include those made by the Eighty-second Legislature during the Regular Session in House Bill 1 (General Appropriations Act), House Bill 4 (Supplemental Appropriations), House Bill 3647 (Miscellaneous Claims), and during the First Called Special Session in Senate Bill 2 (General Appropriations). Any subsequent appropriations made by the Eighty-third Legislature for the 2012-13 biennium would also be included in total appropriations.

Section I of Table 6 shows, for general revenue related funds, the total amount of appropriations, the amount of total appropriations financed from constitutionally dedicated tax revenue, the amount financed from non-tax revenue and the remainder - the amount financed from tax revenue not dedicated by the Constitution - which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund and Foundation School Fund.

I. General Revenue Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) all other line item appropriations.

1. "Estimated to Be" Line Item Appropriations: Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2012 amounts are based on actual 2012 expenditures. Most amounts for fiscal year 2013 are taken from House Bill 1, Eighty-second Legislature.

2. All Other Line Item Appropriations: As calculated in Table 7, the amount shown for "All Other Line Items" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 7 are from House Bill 1, Eighty-second Legislature. Appropriation figures have been adjusted to incorporate certain Article IX appropriations, as well as Governor's vetoes, House Bill 4, House Bill 3647, and Senate Bill 2 - First Called Special Session.

B. Source of Funding - General Revenue Related: Table 6, Part B shows that of the $81,000,400,604 of general revenue related fund appropriations, $65,344,405,936 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into general revenue related funds are estimated to total $4,449,848,384 during the 2012-13 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at $11,206,146,285 for the 2012-13 biennium. Revenue analysis in this calculation applies actual fiscal year 2012 revenue collections and the most recent revenue estimates by the Comptroller of Public Accounts for fiscal year 2013.

II. Appropriations from Funds Outside of General Revenue

Certain tax revenues are deposited into accounts outside of General Revenue. Appropriations from tax revenue not dedicated by the Constitution out of these accounts are included in this calculation.

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining five percent is deposited into Account 0009 - Game, Fish and Water Safety. The state imposes an insurance companies maintenance tax which is deposited into Account 0036 - Texas Department of Insurance Operating.

A portion of the motor vehicles sales tax, franchise tax and cigarette tax is deposited into Account 0304 - Property Tax Relief. The state also taxes the sale of fireworks, a portion of which is deposited into Account 5066 - Rural Volunteer Fire Department Insurance. In addition, part of the sales tax and a motor vehicles sales tax is deposited into Account 5071 - Emissions Reduction Plan. Furthermore, a portion of tobacco tax revenue is deposited into Account 5144 - Physician Education Loan Repayment Program.

Grand Total

A grand total of $86,386,570,914 in 2012-13 biennial appropriations is included in this analysis. Of this amount, $4,449,848,384 is financed out of taxes dedicated by the State Constitution. Another $11,574,355,694 is financed out of non-tax revenue. The remaining $70,362,366,836 is financed out of tax revenue not dedicated by the State Constitution. This amount serves as the base for calculating the limitation on 2014-15 biennial appropriations from tax revenue not dedicated by the Constitution, as required by Article VIII, Section 22, of the Texas Constitution.

Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2011
In Millions of Current Dollars

Earnings by Place of Work		**Amount**	**Percent of Total**
Wage and Salary Disbursements		$535,384	67.1%
Supplements to Wages and Salaries		124,066	15.6%
Proprietors' Income			
Farm	$2,328		
Nonfarm	135,843		
Subtotal		138,170	17.3%
Total Earnings by Place of Work		$797,621	100.0%
Derivation of Total Personal Income			
Earnings by Place of Work (from above)		$797,621	
Less: Personal Contribution for Social Insurance	$31,315		
Plus: Adjustment for Residence	(2,198)		
Equals: Net Earnings by Place of Residence		$764,108	71.6%
Plus: Dividends, Interest and Rent		142,470	13.4%
Plus: Personal Current Transfer Receipts		160,440	15.0%
Total Personal Income		$1,067,017	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, September 2012.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1982-83 TO 2010-11 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1980-81	1982-83	1.253	25.3
1982-83	1984-85	1.171	17.1
1984-85	1986-87	1.085	8.5
1986-87	1988-89	1.095	9.5
1988-89	1990-91	1.148	14.8
1990-91	1992-93	1.135	13.5
1992-93	1994-95	1.130	13.0
1994-95	1996-97	1.157	15.7
1996-97	1998-99	1.175	17.5
1998-99	2000-01	1.162	16.2
2000-01	2002-03	1.055	5.5
2002-03	2004-05	1.122	12.2
2004-05	2006-07	1.176	17.6
2006-07	2008-09	1.117	11.7
2008-09	2010-11	1.048	4.8

Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FIVE ECONOMETRIC MODELS
2012-13 BIENNIUM TO 2014-15 BIENNIUM

Source of Forecast	2014-15 Texas Personal Income Growth Rate
1. IHS Global Insight	1.1121
2. Moody's Analytics	1.1221
3. Perryman Group	1.1177
4. Texas Comptroller of Public Accounts	1.1071
5. University of North Texas Center for Economic Development and Research	1.0871

Note: The growth rates shown above can be interpreted in percentage terms. For example, the growth rate of 1.1121 for the IHS Global Insight forecast of Texas personal income indicates estimated personal income growth of 11.21 percent for the 2014-15 biennium.

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2014-15 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. IHS Global Insight	Econometric	October 2012
2. Moody's Analytics	Econometric	October 2012
3. Perryman Group	Econometric	October 2012
4. Texas Comptroller of Public Accounts	Econometric	October 2012
5. University of North Texas Center for Economic Development and Research	Econometric	October 2012

Source: Compiled by the Legislative Budget Board, October 2012.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 5
TWO ILLUSTRATIONS OF A POSSIBLE
LIMIT ON 2014-15 BIENNIUM APPROPRIATIONS
OF STATE TAX REVENUE NOT DEDICATED BY
THE TEXAS CONSTITUTION
In Millions of Dollars

1. 2012-13 Base	$ 70,362.4	$ 70,362.4
2. Illustrative Growth Rates	X 1.0871	X 1.1221
3. 2014-15 Limitation on Growth in Appropriations	$ 76,490.9	$ 78,953.6

Figure 6 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 6
2012-13 BIENNIAL APPROPRIATIONS
INCLUDED IN THE CALCULATION OF
THE LIMITATION BASE

		2012 Expenditures/ 2013 Appropriations
1.	General Revenue Related Funds	
A.	Appropriations	
1.	"Estimated To Be" Line Item Appropriations in General Appropriations Act, 82nd Legislature	
(a)	Fiscal Programs - Comptroller of Public Accounts	$ 26,660,606
	A.1.2. Strategy: Miscellaneous Claims	
(b) *	Fiscal Programs - Comptroller of Public Accounts	241,112,996
	A.1.4. Reimbursement - Beverage Tax	
(c)	Fiscal Programs - Comptroller of Public Accounts	6,762,069
	A.1.6. County Taxes - University Lands	
(d)	Fiscal Programs - Comptroller of Public Accounts	350,512,646
	A.1.8. Unclaimed Property	
(e)	Funds Appropriated to the Comptroller for Social Security and BRP	994,846,684
	A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	
(f)	Employees Retirement System	2,111,731,099
	A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	
(g)	Secretary of State	1,290,759
	B.1.5. Strategy: Voter Registration	
(h)	Department of State Health Services	41,496,750
	Vendor Drug Rebates–Public Health	
(i)	Department of State Health Services	1,780,267
	D.1.6. Strategy: Texasonline	
(j)	Health and Human Services	107,431,675
	Medicaid Program Income	
(k)	Health and Human Services	986,628,807
	Vendor Drug Rebates—Medicaid	
(l)	Health and Human Services	317,369
	Cost Sharing - Medicaid Clients	
(m)	Health and Human Services	63,117,421
	Vendor Drug Rebates-Supplemental Rebates	
(n)	Health and Human Services	9,770,067
	Premium Co-Payments, Low Income Children	
(o)	Health and Human Services	11,103,119
	Experience Rebates-CHIP	
(p)	Health and Human Services	13,507,757
	Vendor Drug Rebates-CHIP	
(q)	Texas Education Agency	44,165,968

	B.3.6. Strategy: Certification Exam Administration	
(r)	Teacher Retirement System	2,734,313,221
	A.1.1. Strategy: TRS - Public Education - (GR Portion)	
(s)	Teacher Retirement System	406,555,723
	A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	
(t)	Teacher Retirement System	401,026,477
	A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion)	
(u)	Optional Retirement Program	206,699,074
	A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(v)	Office Of Court Administration, Texas Judicial Council	24,781
	C.1.2. Strategy: Texasonline	
(w)	Department Of Housing And Community Affairs	21,090
	E.1.4. Strategy: Texasonline	
(x)	Texas Lottery Commission	173,124,146
	A.1.6. Strategy: Lottery Operator Contract	
(y)	Texas Lottery Commission	25,518,719
	B.1.5. Strategy: Bingo Prize Fee Allocations	
(z)	Board Of Chiropractic Examiners	63,018
	A.1.2. Strategy: Texasonline	
(aa)	Texas State Board Of Dental Examiners	406,583
	A.2.2. Strategy: Texasonline	
(ab)	Funeral Service Commission	79,132
	A.1.2. Strategy: Texasonline	
(ac)	Board Of Professional Geoscientists	56,240
	A.1.2. Strategy: Texasonline	
(ad)	Department Of Insurance	13,189
	A.2.4. Strategy: Texasonline	
(ae)	Board Of Professional Land Surveying	27,330
	A.1.3. Strategy: Examination	
(af)	Board Of Professional Land Surveying	34,706
	A.1.4. Strategy: Texasonline	
(ag)	Department Of Licensing And Regulation	933,435
	A.1.5. Strategy: Texasonline	
(ah)	Texas Medical Board	540,409
	A.1.2. Strategy: Texasonline	
(ai)	Texas Board of Nursing	937,488
	A.1.2. Strategy: Texasonline	
(aj)	Optometry Board	37,040
	A.1.2. Strategy: Texasonline	
(ak)	Board Of Pharmacy	488,742
	A.1.2. Strategy: Texasonline	
(al)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	340,148

	A.1.2. Strategy: Texasonline		
(am)	Board Of Plumbing Examiners	282,543	
	A.1.2. Strategy: Texasonline		
(an)	Board Of Podiatric Medical Examiners	9,252	
	A.1.2. Strategy: Texasonline		
(ao)	Board Of Examiners Of Psychologists	63,940	
	A.1.2. Strategy: Texasonline		
(ap)	Racing Commission	41,973	
	B.1.2. Strategy: Texasonline		
(aq)	Board Of Veterinary Medical Examiners	69,935	
	A.1.2. Strategy: Texasonline		
(ar)	Multiple Agencies: Earned Federal Funds	171,608,689	
	Sec. 6.22. Definition, Appropriation, Reporting and Audit of Earned Federal Funds		
(as)	Adjustment for Property Tax Relief Fund Revenue	(394,251,528)	
	Subtotal, "Estimated to Be" Line Item Appropriations		$ 8,741,301,554
2.	All Other Line Items		$ 72,259,099,050
TOTAL (General Revenue Related Fund Appropriations)			$ 81,000,400,604

B. Source of Funding - General Revenue Related	Total Appropriations	Constitutionally Dedicated State Tax Revenues	Non Tax Revenues	State Tax Revenue Not Dedicated by the Constitution
1. Occupation Taxes	$2,386,481,127	$2,386,481,127	$0	$0
2. Motor Fuel Taxes	2,093,676,171	2,063,367,257	-	30,308,914
3. Education Revenues	4,110,970,053	-	4,110,970,053	-
4. Insurance Maintenance Tax	267,307,355	-	-	267,307,355
5. Hotel Tax	65,094,418	-	-	65,094,418
6. Sporting Good Sales Tax	92,315,302	-	-	92,315,302
7. Appropriations from Other Revenue	71,984,556,179	-	7,095,176,232	64,889,379,947
SUBTOTAL(General Revenue Related)	$81,000,400,604	$4,449,848,384	$11,206,146,285	$65,344,405,936
II. Appropriations from Funds Outside of GR				
1. Account 0009 – Game, Fish, and Water Safety	$178,932,305	-	$175,950,649	$2,981,656
2. Account 0036 – Texas Department of Insurance Operating	137,590,725	-	133,615,925	3,974,800
3. Account 0304 – Property Tax Relief	4,931,819,528	-	2,122,832	4,929,696,696
4. Account 5066 – Rural Volunteer Fire Department Insurance	1,900,000	-	403	1,899,597
5. Account 5071 – Emissions Reduction Plan	130,327,752	-	56,488,234	73,839,518
6. Account 5144 - Physician Education Loan Repayment Program	5,600,000	-	31,366	5,568,634
GRAND TOTAL	$86,386,570,914	$4,449,848,384	$11,574,355,694	$70,362,366,836

Figure 7 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 7
CALCULATION OF "ALL OTHER LINE ITEMS"
FOR THE 2012-13 BIENNIUM

	2012	2013	2012-13
General Revenue Funds "Recap" Amount	$44,164,393,756	$37,126,048,089	$81,290,441,845
Less "Estimated to Be" Items:			
Fiscal Programs - Comptroller of Public Accounts A.1.2. Strategy: Miscellaneous Claims (HB1, Article I-25)	6,500,000	6,500,000	13,000,000
Fiscal Programs - Comptroller of Public Accounts A.1.4. Reimbursement - Beverage Tax (HB1, Article I-25)	119,714,964	126,305,843	246,020,807
Fiscal Programs - Comptroller of Public Accounts A.1.6. County Taxes - University Lands (HB1, Article I-26)	3,414,396	3,598,811	7,013,207
Fiscal Programs - Comptroller of Public Accounts A.1.8. Unclaimed Property (HB1, Article I-26)	183,545,461	183,545,461	367,090,922
Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (HB1, Article I-32)	517,208,009	523,293,922	1,040,501,931
Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (HB1, Article I-36)	1,020,382,278	1,106,961,183	2,127,343,461
Secretary of State B.1.5. Strategy: Voter Registration (HB1, Article I-91)	5,000,000	1,000,000	6,000,000
Department of State Health Services Vendor Drug Rebates–Public Health (HB1, Article II-47)	12,923,000	13,006,000	25,929,000

	2012	2013	2012-13
Department of State Health Services D.1.6. Strategy: Texasonline (HB1, Article II-50)	1,146,140	1,146,140	2,292,280
Health and Human Services Medicaid Program Income (HB1, Article II-77)	40,000,000	40,000,000	80,000,000
Health and Human Services Vendor Drug Rebates—Medicaid (HB1, Article II-77)	399,142,420	419,353,525	818,495,945
Health and Human Services Cost Sharing - Medicaid Clients (HB1, Article II-77)	68,611	68,611	137,222
Health and Human Services Vendor Drug Rebates-Supplemental Rebates (HB1, Article II-78)	32,225,251	33,857,021	66,082,272
Health and Human Services Premium Co-Payments, Low Income Children (Rev Code 3643) (HB1, Article II-78)	4,826,835	4,792,053	9,618,888
Health and Human Services Experience Rebates-CHIP (HB1, Article II-78)	2,267,136	2,339,139	4,606,275
Health and Human Services Vendor Drug Rebates-CHIP (HB1, Article II-78)	6,354,666	6,567,594	12,922,260
Texas Education Agency B.3.6. Strategy: Certification Exam Administration (HB1, Article III-4)	20,075,000	20,075,000	40,150,000
Teacher Retirement System A.1.1. Strategy: TRS - Public Education - (GR Portion) (HB1, Article III-29)	1,323,054,784	1,411,258,437	2,734,313,221
Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (HB1, Article III-29)	245,202,085	265,348,271	510,550,356

	2012	2013	2012-13
Teacher Retirement System A.2.1. Strategy: Retiree Health - Statutory Funds (GR Portion) (HB1, Article III-30)	267,350,984	133,675,493	401,026,477
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (HB1, Article III-34)	102,670,649	102,670,648	205,341,297
Office Of Court Administration, Texas Judicial Council C.1.2. Strategy: Texasonline (HB1, Article IV-24)	10,290	12,571	22,861
Department Of Housing And Community Affairs E.1.4. Strategy: Texasonline (HB1, Article VII-2)	19,120	19,120	38,240
Texas Lottery Commission A.1.6. Strategy: Lottery Operator Contract (HB1, Article VII-9)	83,445,824	83,887,804	167,333,628
Texas Lottery Commission B.1.5. Strategy: Bingo Prize Fee Allocations (HB1, Article VII-9)	12,635,500	12,635,500	25,271,000
Board Of Chiropractic Examiners A.1.2. Strategy: Texasonline (HB1, Article VIII-5)	29,850	29,850	59,700
Texas State Board Of Dental Examiners A.2.2. Strategy: Texasonline (HB1, Article VIII-7)	184,629	184,629	369,258
Funeral Service Commission A.1.2. Strategy: Texasonline (HB1, Article VIII-8)	39,000	39,000	78,000
Board Of Professional Geoscientists A.1.2. Strategy: Texasonline (HB1, Article VIII-10)	30,000	30,000	60,000
Department Of Insurance A.2.4. Strategy: Texasonline (HB1, Article VIII-17)	6,520	6,520	13,040

	2012	2013	2012-13
Board Of Professional Land Surveying A.1.3. Strategy: Examination (HB1, Article VIII-28)	16,500	16,500	33,000
Board Of Professional Land Surveying A.1.4. Strategy: Texasonline (HB1, Article VIII-28)	18,000	18,000	36,000
Department Of Licensing And Regulation A.1.5. Strategy: Texasonline (HB1, Article VIII-30)	467,200	467,200	934,400
Texas Medical Board A.1.2. Strategy: Texasonline (HB1, Article VIII-35)	446,366	457,670	904,036
Texas Board of Nursing A.1.2. Strategy: Texasonline (HB1, Article VIII-38)	364,375	364,375	728,750
Optometry Board A.1.2. Strategy: Texasonline (HB1, Article VIII-41)	18,000	18,000	36,000
Board Of Pharmacy A.1.2. Strategy: Texasonline (HB1, Article VIII-43)	217,345	221,785	439,130
Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: Texasonline (HB1, Article VIII-45)	157,715	157,715	315,430
Board Of Plumbing Examiners A.1.2. Strategy: Texasonline (HB1, Article VIII-47)	155,000	155,000	310,000
Board Of Podiatric Medical Examiners A.1.2. Strategy: Texasonline (HB1, Article VIII-49)	4,428	4,427	8,855
Board Of Examiners Of Psychologists A.1.2. Strategy: Texasonline (HB1, Article VIII-51)	32,000	32,000	64,000
Racing Commission B.1.2. Strategy: Texasonline	23,250	23,250	46,500

	2012	2013	2012-13
(HB1, Article VIII-53)			
Board Of Veterinary Medical Examiners A.1.2. Strategy: Texasonline (HB1, Article VIII-65)	33,650	33,650	67,300
Multiple Agencies: Earned Federal Funds Sec. 6.22. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (HB1, Article IX-34)	57,982,305	57,755,541	115,737,846
Subtotal, Line Items Shown Separately	$4,469,409,536	$4,561,933,259	$9,031,342,795
Total Other Line Items	$39,694,984,220	$32,564,114,830	$72,259,099,050

TRD-201205581
Ursula Parks
Acting Director
Legislative Budget Board
Filed: October 30, 2012

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North Central Texas Council of Governments

Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the April 13, 2012, issue of the *Texas Register* (37 TexReg 2799). The selected consultant will perform technical and professional work for the City of Cleburne - This is Texas: Planning a Sustainable Future for Downtown.

The consultant selected for this project is Halff and Associates, Inc., 1201 North Bowser Road, Richardson, Texas 75081. The amount of the contract is not to exceed $125,000.

TRD-201205525
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: October 24, 2012

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Public Utility Commission of Texas

Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 23, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Bexar Metro 9-1-1 Network District for a Service Provider Certificate of Operating Authority, Docket Number 40877.

Applicant intends to provide 9-1-1 database services.

Applicant proposes to provide service within certain rate centers served by Guadalupe Valley Telephone Cooperative, Inc., Verizon Southwest, Southwestern Bell Telephone Company d/b/a AT&T Texas, and CenturyLink.

Persons who wish to comment upon 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 no later than November 16, 2012. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40877.

TRD-201205529
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 24, 2012

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Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on October 23, 2012, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of Douglas, Chancellor, Meyers, and Associates for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 40875.

The Application: Douglas, Chancellor, Meyers, and Associates (DCMA) filed a request for a waiver of the registration number requirement in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, Question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council for Terminal Attachments (ACTA).

DCMA stated that it uses a web-based platform with calls made over a Voice over Internet Protocol (VoIP) platform and does not have an FRN, and therefore is requesting a waiver.

Persons wishing to comment on the action sought or intervene 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 1-888-782-8477. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 40875.

TRD-201205528
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 24, 2012

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on October 25, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Webb, Zapata, Jim Hogg, Brooks, Starr and Hidalgo Counties, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend a Certificate of Convenience and Necessity for the Proposed Lobo to Rio Bravo to North Edinburg Double-Circuit 345-kV Transmission Line in Webb, Zapata, Jim Hogg, Brooks, Starr and Hidalgo Counties. SOAH Docket Number 473-13-0846; PUC Docket Number 40728.

The Application: The application of Electric Transmission Texas, LLC involves the design and construction of the Lobo to Rio Bravo to North Edinburg 345-kilovolt transmission line. The line will be designed and operated as a 345-kV transmission line and will be constructed on double-circuit steel single-pole structures. The proposed project is comprised of two different segments: (1) the Lobo to Rio Bravo Segment, and (2) the Rio Bravo to North Edinburg Segment. Electric Transmission Texas, LLC presented a total of 13 alternative routes for the Lobo to Rio Bravo Segment and a total of 19 alternative routes for the Rio Bravo to North Edinburg Segment. Any route or any other combination of routes presented in the application could, however, be approved by the commission.

The proposed Lobo to Rio Bravo to North Edinburg transmission line project will range from approximately 138 miles to 188 miles in length. The estimated cost of the transmission line project is approximately $265 to $365 million. The estimated date to energize facilities for the project is July 1, 2016.

The Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) has deemed this transmission line as critical to the reliability of the ERCOT system and specifically, the Lower Rio Grande Valley. The commission shall render a decision approving or denying any such application for a CCN within 180 days of the date of filing a complete CCN application, unless good cause is demonstrated for extending such a period. Therefore, a commission decision must be issued by April 23, 2013.

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 December 10, 2012. Hearing- and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference SOAH Docket Number 473-13-0846; PUC Docket Number 40728.

TRD-201205579
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2012

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Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, §13.064 (Vernon 2007 & Supp. 2012) (PURA), the Office of Public Utility Counsel (Office) will conduct its annual public hearing.

The public hearing will be held on the date and time and at the location indicated below.

Tuesday, November 27, 2012, from 5:30 - 7:00 p.m.

Lufkin City Hall, Room 202 (Above the Council Chambers)

300 East Shepherd Avenue

Lufkin, Texas 75901

Phone: (936) 634-8881

All interested persons are invited to attend and provide input.

The Office represents the interests of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, state and federal courts, and federal regulatory bodies. The Office seeks public input to assist the Office in developing a plan of priorities and seeks comments on the Office's functions and effectiveness.

Contact Michele Gregg at P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 or 1-(877)-839-0363 or email: customer@opuc.texas.gov for further information.

TRD-201205537
Sheri Givens
Public Counsel
Office of Public Utility Counsel
Filed: October 25, 2012

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Texas Department of Transportation

Revised Notice of Request for Proposals - Toll Operations and Customer Service Center Operator (Bid Number B442013007834000)

On October 26, 2012, the Texas Department of Transportation (department) issued a Request for Proposals (RFP) to procure services from a prime vendor with high quality systems to support the operation of the customer service center (CSC) and toll plazas for current and future toll facilities in Texas. The department is issuing this revised notice to announce that persons interested in obtaining a copy of the RFP should access the Electronic State Business Daily (ESBD) database maintained by the Texas Comptroller of Public Accounts or the department's website, rather than contacting Ms. Kathy Garrett as directed in the notice published on October 26, 2012. Also, the deadline for submitting questions regarding the RFP has been changed from November 9, 2012 to November 12, 2012.

Pursuant to Texas Transportation Code, §228.052, the department may seek to enter into an agreement with one or more persons to provide personnel, equipment, systems, facilities, and/or services necessary to operate a toll project or system, including but not necessarily limited to the operation of customer service centers and the collection of tolls. The Texas Transportation Commission has promulgated rules located at 43 Texas Administrative Code §27.83, governing the requirements for soliciting proposals to operate a department toll project or system.

Purpose: The department is seeking proposals from qualified vendors interested in providing CSC services supporting present and future toll projects throughout the state and toll operations services for the Central Texas Turnpike System. The department seeks a vendor to provide staff, systems, and supplies required to establish, operate, and maintain the TxTag statewide CSC operation in accordance with the department's business rules and the requirements of the scope of work, and manage and maintain the existing toll plaza operations and facilities.

To Obtain a Copy of the RFP: The RFP is available on the ESBD, accessible at:

www.esbd.cpa.state.tx.us

and on the department's website:

www.txdot.gov (click on "business", click on "opportunities", and then "Toll Operations/Customer Service Center Operator RFP"). Any updates or addenda to the RFP will be posted on both the ESBD and the department's website.

Proposal Submission Deadline: Wednesday, December 12, 2012 at 3:00 p.m.

Additional Information: The department has operated toll roads in Texas since 2006. Additional information regarding facility background and descriptions can be researched at:

www.texastollways.com.

TRD-201205590
Angie Parker
Associate General Counsel
Texas Department of Transportation
Filed: October 31, 2012

Workforce Solutions Brazos Valley Board

Public Notice

The Workforce Solutions Brazos Valley Board seeks public comment on their updated local strategic integrated plan for fiscal year 2013 through 2017. This plan outlines the Board's strategic integrated plan for workforce service delivery that includes program services in WIA, CCMS, TANF Choices, Supplemental Nutrition Assistance Program Employment Services, and Veterans Services. A copy of this plan modification may be reviewed at their office located at 3991 East 29th, Bryan, Texas 77802 between 8:00 a.m. to 5:00 p.m., Monday through Friday, for the period of November 9, 2012, to December 10, 2012.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity employment programs. Auxiliary aids are available upon request to disabled individuals. Texas Relay (800) 735-2989 TDD; (800) 735-2988 voice.

TRD-201205538
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: October 25, 2012

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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, Room 245, 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 ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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
40 TAC §3.704.....950 *(P)*