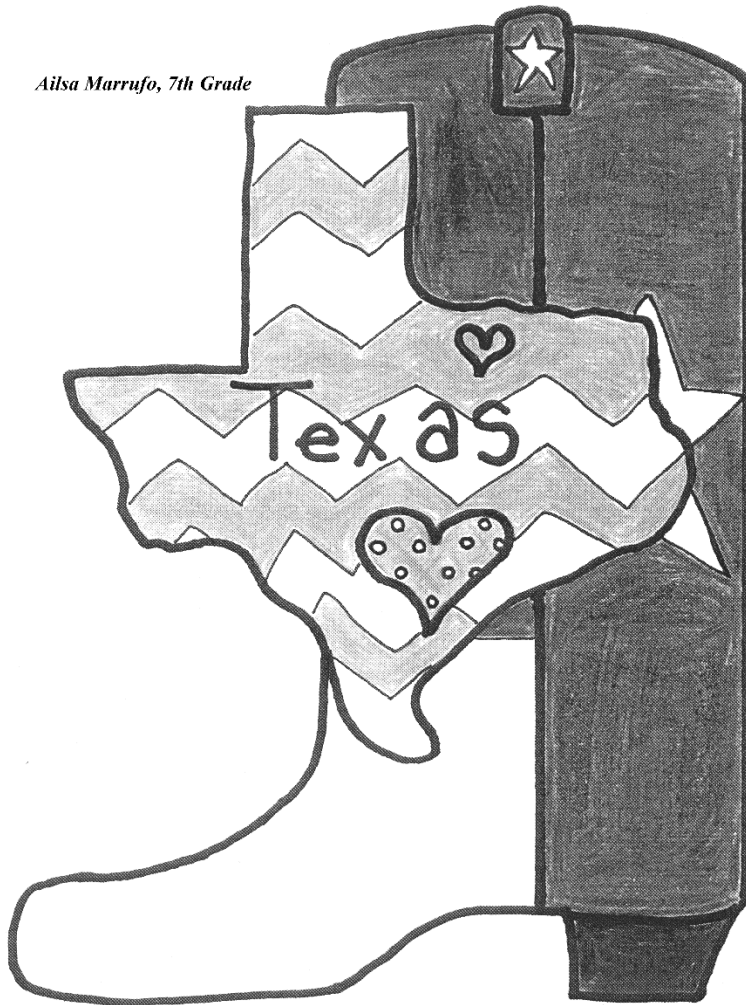

TEXAS REGISTER

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Ailsa Marrufo, 7th Grade



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THE ATTORNEY GENERAL

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the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Opinions

Opinion No. KP-0244

The Honorable J.D. Lambright
Montgomery County Attorney
501 North Thompson, Suite 300
Conroe, Texas 77301

Re: Whether the city attorney and city administrator are local public officials subject to chapter 171 of the Local Government Code (RQ-0249-KP)

SUMMARY

Section 171.004 of the Local Government Code prohibits a "local public official" from participating in a vote or decision involving property in which the official has a substantial interest when it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property. Because the city attorney and a city administrator at issue do not possess authority to vote or make a decision on a proposed agreement as described, they are not subject to the requirements of section 171.004 of the Local Government Code with respect to that agreement.

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

TRD-201900773
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 7, 2019



Opinion No. KP-0245

The Honorable Matthew Poston
Liberty County Attorney

1923 Sam Houston Street, Suite 202
Liberty, Texas 77575

Re: Authority of county law enforcement to enforce county weight regulations on county roads (RQ-0251-KP)

SUMMARY

Following analogous judicial and attorney general opinions, a court would likely conclude that one statewide weight enforcement framework exists under Transportation Code chapters 621 and 251. Thus, the authority granted to a constable or deputy constable under Transportation Code section 251.153 is identical to the authority described by Transportation Code section 621.402.

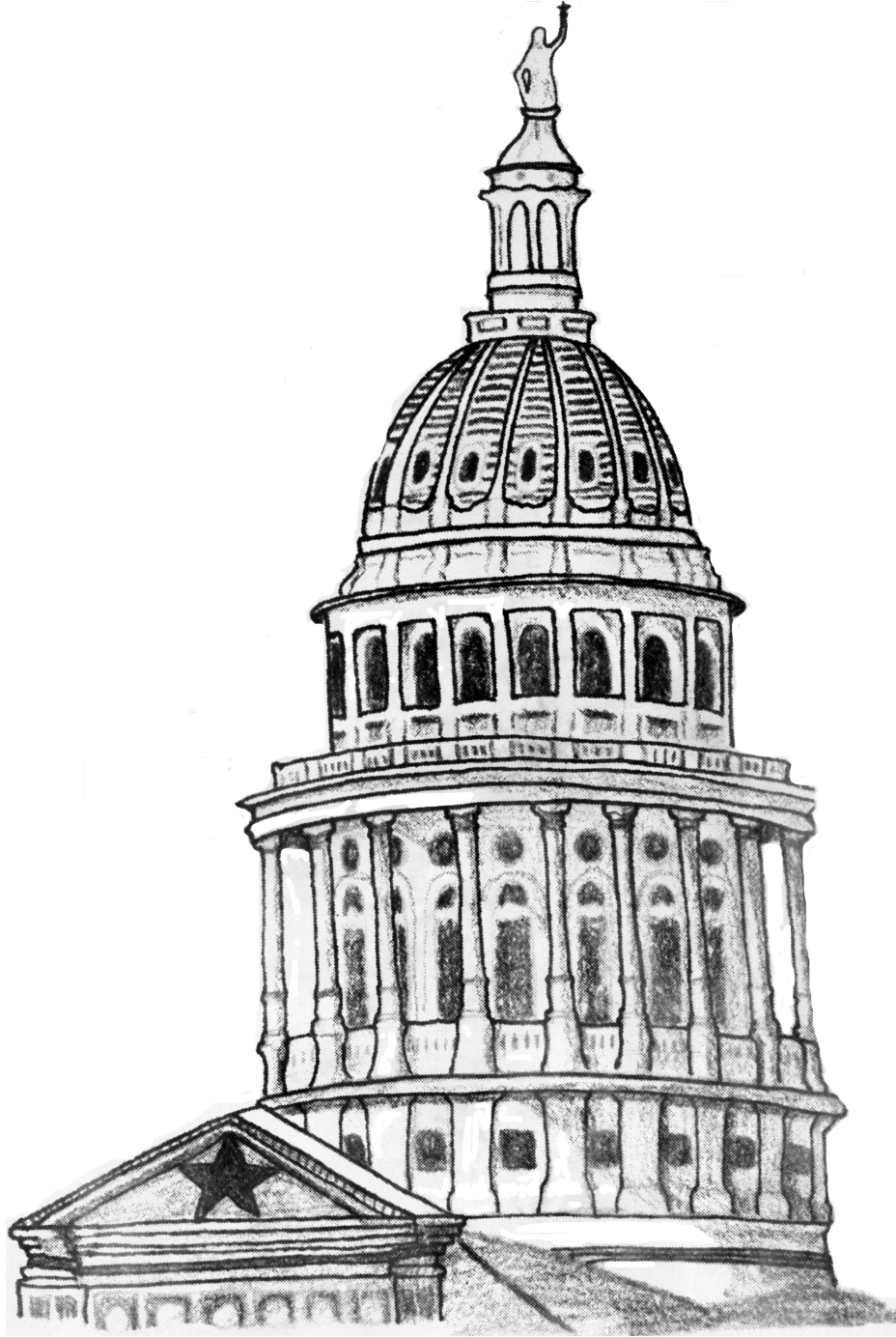
Construing Transportation Code subsection 621.402(e)(1), and the Department of Transportation's rule implementing it as a qualification to Transportation Code subsection 251.153(b), a court would likely conclude that a local law enforcement officer such as a constable or deputy constable must be certified by the Department to enforce weight restrictions, even if he or she enforces those restrictions only on county roads.

Similarly, construing Transportation Code subsection 621.402(e)(2)(B) as a qualification to Transportation Code subsection 251.153(b), a court would likely conclude that the Department may revoke a constable's authorization to weigh vehicles granted by a county commissioners court.

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

TRD-201900794
Ryan L. Bangert
Deputy Attorney General for Legal Counsel
Office of the Attorney General
Filed: March 12, 2019





PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER F. SPECIAL INVESTIGATIVE UNITS

1 TAC §353.502, §353.505

The Texas Health and Human Services Commission (HHSC) proposes amendments to §353.502, concerning Managed Care Organization's Plans and Responsibilities in Preventing and Reducing Waste, Abuse, and Fraud; and §353.505, concerning Recovery of Funds.

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement various provisions of House Bill (HB) 2379, 85th Legislature, Regular Session, 2017, and update procedures which managed care organizations (MCOs) must follow to refer cases to the HHSC Office of the Inspector General (HHSC-OIG).

HB 2379 amended Texas Government Code, Chapter 531 regarding the recovery and retention of funds paid to providers as a result of fraud or abuse. The bill allows MCOs to retain half of the funds they recover under certain circumstances, and remit the remainder to HHSC-OIG for deposit in the general revenue fund. When HHSC-OIG pursues fraud or abuse cases referred to it by an MCO, the MCO is entitled to half of the money recovered for each payment the MCO reported in detail, less any applicable federal share. The remainder of the recovered funds are deposited in the general revenue fund by HHSC-OIG. In addition, the bill requires HHSC-OIG and the MCOs to coordinate efforts to ensure that payment efforts for the same case of waste, abuse, or fraud are not duplicated.

HB 2379 requires MCOs to provide a detailed description of the fraud or abuse and each payment made to a provider as a result of the fraud or abuse, as defined by rule, as a condition precedent to an MCO receiving half the money recovered by HHSC-OIG. Accordingly, the proposed amendments clarify the information which must be included in an MCO referral to HHSC-OIG concerning fraud, waste, or abuse.

Finally, the proposed amendments modify the requirements for an MCO to review 30 recipients or 15 percent of a provider's claims when investigating fraud, waste, or abuse. An MCO can review fewer recipients or claims as long as the MCO's referral to HHSC-OIG includes written justification for the decision. HHSC-OIG reserves the right to request additional information if the agency deems it necessary.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §353.502(c)(2)(C) reduces the number of recipients an MCO, investigating waste, abuse, or fraud, must review from 50 to 30 recipients or 15 percent of a provider's claims. Additionally, the proposed amendment allows an MCO to review fewer recipients or claims but must provide HHSC-OIG written justification for the decision.

Proposed amendment to §353.502(c)(5)(D) clarifies an MCO's obligatory requirement to notify HHSC-OIG of possible acts of waste, abuse, or fraud and the documentation required to submit a referral to HHSC-OIG.

Proposed amendment to §353.505(a)(1) deletes "immediately" from the requirement to notify HHSC-OIG of waste, abuse, or fraud and reiterates the referral process as described in §353.502.

Proposed amendment to §353.505(a)(2) simplifies the existing language directing MCOs to begin payment recovery efforts.

Proposed amendment to §353.505(b) revises existing language to increase readability.

Proposed amendment to §353.505(c) deletes the existing language of subsection (c), since the statute was amended to include specific directions concerning the collection of overpayments, rather than leaving those decisions to HHSC-OIG or the OAG.

Proposed amendment to §353.505(d) renumbers the subsection to (c) and amends existing language allowing MCOs to retain one-half of funds recovered due to confirmed abuse or fraud investigations and remit the remainder to HHSC-OIG.

Proposed amendment to §353.505(e) renumbers the subsection to (d) and revises existing language allowing MCOs, under certain circumstances, to receive one-half of funds recovered by HHSC-OIG, for each payment identified by the MCO, less any applicable federal share.

Proposed amendment to §353.505(f) renumbers the subsection to (e) and amends current language to impose a duty on the MCOs to submit quarterly reports detailing amounts of recovered funds.

Proposed new §353.505(f) specifies that HHSC-OIG may recover payments made to providers as a result of waste, abuse, or fraud and the funds will be deposited in the general revenue fund.

Proposed new §353.505(g) requires HHSC-OIG to coordinate payment recovery efforts with MCOs to prevent duplicative efforts.

FISCAL NOTE

Ms. Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there may be an anticipated fiscal impact to costs and revenues of state government as a result of enforcing and administering the sections as proposed. These rules are the result of changes made in the statute and could increase revenue to the State by requiring MCOs to remit one-half of the funds they recover as a result of abuse or fraud investigations to HHSC-OIG in certain cases. There is insufficient data to estimate the net change in revenue at this time as the number of investigations and total recoupments will vary.

There is no anticipated fiscal impact to local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will not create a new rule;
- (6) the proposed rules will not expand, limit, or repeal an existing rule;
- (7) the proposed rules will not change the number of individuals subject to the rule; and
- (8) the proposed rules will not affect the state's economy.

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

Ms. Rymal has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. None of the MCOs are small-businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are anticipated economic costs to persons who are required to comply with the sections as proposed. The proposed rules reduce the allowed MCO retention of recovered funds, resulting from fraud or abuse, and requires submission of one-half of those funds to the HHSC-OIG in certain cases. The proposed rules would also increase documentation required to be submitted in MCO referrals to the HHSC-OIG. HHSC lacks sufficient data to provide an estimate of the cost to comply.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT

Anne Dvorak, Director of Program Integrity Development and Support, HHSC-OIG Medicaid Program Integrity and Medical Services Division, has determined that for each year of the first

five years the amended rules are in effect, the public will benefit from adoption of the amended rules. The public benefit anticipated as a result of enforcing or administering the amended rules will allow HHSC-OIG to coordinate payment recovery efforts and to ensure that MCOs adequately investigate potential waste, abuse, and fraud; report improper payments; and remit appropriate payment to the HHSC-OIG, thus strengthening Medicaid program integrity.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 18R069" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement the law regarding payment recovery efforts, including procedures that must be followed by an MCO when engaging in payment recovery efforts; and Texas 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 amendments implement Texas Government Code, §§531.033, 531.1131(e) and 531.021, and Texas Human Resources Code, §32.021.

§353.502. Managed Care Organization's Plans and Responsibilities in Preventing and Reducing Waste, Abuse, and Fraud.

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

(c) The plan submitted to the HHSC-OIG must include the following information to be considered for approval.

(1) (No change.)

(2) A description of the MCO's procedures for investigating possible acts of waste, abuse, and fraud by providers. The procedures must satisfy the requirements in subparagraphs (A) - (C) of this paragraph.

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

(C) If it is determined that suspicious indicators of possible waste, abuse, or fraud exist, within 15 working days from the con-

clusion of subparagraphs (A) and (B) of this paragraph, the MCO must select a minimum of 30 [sample for further review. The sample must consist of a minimum of 50] recipients or 15% of a provider's claims related to the suspected waste, abuse, and fraud; provided, however, that if the MCO selects [a sample based upon] 15% of the claims, the MCO [sample] must include claims relating to at least 30 [50] recipients. The MCO may confirm the suspicious indicators of fraud, waste, and abuse with a review of fewer recipients or claims, provided that the MCO submits, as part of the MCO's referral, a written justification for the decision to substantiate the waste, abuse, or fraud with fewer recipients or claims. Once the MCO selects the recipients or claims for review, the MCO must:

(i) within 15 working days of the selection of the recipients or claims for review [sample], request medical or dental records and encounter data [for the sample recipients]; and must

(ii) (No change.)

(3) - (4) (No change.)

(5) A description of the MCO's internal procedures for referring possible acts of waste, abuse, or fraud to the MCO's Special Investigative Unit (SIU) and the mandatory reporting of possible acts of waste, abuse, or fraud by providers or recipients to the HHSC-OIG. The procedures must satisfy the requirements in subparagraphs (A) - (E) of this paragraph.

(A) - (C) (No change.)

(D) Within 30 working days of the completion of the SIU investigation and receiving reports of possible acts of waste, abuse, or fraud from the SIU [Utilizing the HHSC-OIG fraud referral form], the assigned officer or director must notify [report] and refer all possible acts of waste, abuse or fraud to the HHSC-OIG. All [within 30 working days of receiving the reports of possible acts of waste, abuse or fraud from the SIU. The report and referral must include an investigative report identifying the allegation, statutes/regulations violated or considered, and the results of the investigation; copies of program rules and regulations violated for the time period in question; the estimated overpayment identified; a summary of interviews conducted; the encounter data submitted by the provider for the time period in question; and all supporting documentation obtained as the result of the investigation. This requirement applies to all] reports and referrals of possible acts of waste, abuse, and fraud, with the exception of an expedited referral, must include the following information related to the referrals:[-:]

(i) the provider's enrollment/credentialing documents;

(ii) the complete SIU investigative file on the provider, which must include:

(I) an investigative report identifying the allegation, statutes/regulations/rules violated or considered, and the results of the investigation;

(II) the estimated overpayment identified;

(III) a summary of interviews conducted; and

(IV) a list of all claims and associated overpayments identified by the preliminary investigation;

(iii) a summary of all past investigations of the provider conducted by the MCO or the MCO's SIU. Upon request, the MCO shall provide the complete investigative files or any other information regarding those past investigations to the HHSC-OIG investigator;

(iv) copies of HHSC program and MCO policy, contract, and other requirements, as well as statutes/regulations/rules, alleged to be violated for the time period in question;

(v) all education letters (including education documents) and/or recoupment letters issued to the provider by the MCO or the MCO's SIU at any time;

(vi) all medical records;

(vii) all clinical review reports/summaries generated by the MCO;

(viii) any and all correspondence and/or communications between the MCO, the MCO's subcontractors, and any of their employees, contractors, or agents, and the provider related to the investigation. This should include but not be limited to agents, servants and employees of the MCO, regardless of whether those agents, servants and employees are part of the SIU who investigated the provider;

(ix) copies of all settlement agreements between the MCO and its contractors and the provider; and

(x) if the referral contains fewer recipients or claims than the minimum described in paragraph (2)(C) of this subsection, a written justification for the decision to substantiate the waste, abuse, or fraud with fewer recipients or claims. The justification will be subject to review and approval by HHSC-OIG, who may require the MCO to provide further information.

(E) (No change.)

(6) - (9) (No change.)

(d) - (g) (No change.)

§353.505. Recovery of Funds.

(a) If a managed care organization (MCO) discovers [suspects] fraud or abuse has occurred in the Medicaid or CHIP program, based on information, data, or facts obtained by the MCO, it must:

(1) [immediately] notify the Health and Human Services Commission-Office of Inspector General (HHSC-OIG) and the Office of the Attorney General (OAG) through a referral as described in §353.502 of this subchapter (relating to Managed Care Organization's Plans and Responsibilities in Preventing and Reducing Waste, Abuse, and Fraud) that includes a detailed description of the fraud or abuse and each payment made to a provider as a result of the fraud or abuse;

(2) subject to subsection (b) of this section, begin payment recovery efforts [following the completion of ordinary due diligence regarding a suspected overpayment as described in this subchapter, begin payment recovery efforts except as provided in subsection (b) of this section]; and

(3) ensure that any payment recovery efforts in which the MCO engages are in accordance with this subchapter.

(b) If the amount sought to be recovered under subsection (a)(2) of this section exceeds \$100,000, the MCO may not engage in payment recovery efforts if, not later than the 10th business day after the date the MCO notified HHSC-OIG and the OAG under subsection (a)(1) of this section, the MCO receives a notice from either office indicating that the MCO is not authorized to proceed with recovery efforts.

[(b) If the amount to be recovered exceeds \$100,000, the MCO may not engage in payment recovery efforts if the MCO receives notice from the HHSC-OIG or the OAG indicating that the MCO is not authorized to proceed with recovery effort. Such notice must be supplied no later than the tenth business day after the MCO notifies the HHSC-OIG and OAG of the suspected fraud or abuse.]

~~{(e) If the HHSC-OIG or the OAG has assumed responsibility for completion of the investigation and final disposition of any administrative, civil, or criminal action taken by the state or federal government, the HHSC-OIG or the OAG will determine and direct the collection of any overpayment.}~~

~~(c) ~~{(d)}~~ To the extent allowed by federal law, an ~~[An]~~ MCO may retain one-half of any money recovered under subsection (a)(2) of this section by the MCO. The MCO shall remit the remaining money recovered under subsection (a)(2) of this section to the OIG.~~

~~(d) If the OIG notifies an MCO under subsection (b) of this section, the OIG proceeds with recovery efforts, and the OIG recovers all or part of the payments the MCO identified as required by subsection (a)(1) of this section, the MCO is entitled to one-half of the amount recovered for each payment the MCO identified after any applicable federal share is deducted. The MCO may not receive more than one-half of the total amount of money recovered after any applicable federal share is deducted.~~

~~{(e) The HHSC-OIG will distribute any amounts collected to the MCO, less any costs of investigation and collection proceedings.}~~

~~(e) ~~{(f)}~~ An MCO shall ~~[must]~~ submit a quarterly report to the HHSC-OIG detailing the amount of money recovered under subsection (a)(2) of this section.~~

~~(f) Notwithstanding any provision of this section, if the OIG discovers waste, abuse, or fraud in Medicaid or CHIP in the performance of its duties, the OIG may recover payments made to a provider as a result of the waste, abuse, or fraud. All payments recovered by the OIG shall be deposited to the credit of the general revenue fund.~~

~~(g) The OIG shall coordinate with MCOs to ensure that the OIG and the MCOs do not both begin payment recovery efforts under this rule for the same case of waste, abuse, or fraud.~~

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

Filed with the Office of the Secretary of State on March 6, 2019.

TRD-201900768

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 491-4052



CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

SUBCHAPTER F. INVESTIGATIONS

1 TAC §§371.1305, 371.1307, 371.1312

The Texas Health and Human Services Commission (HHSC) proposes amendments to §371.1305, concerning Preliminary Investigation, and §371.1307, concerning Full Investigation. HHSC also proposes new §371.1312, concerning Recipient Investigations.

BACKGROUND AND PURPOSE

The Texas Government Code §531.102(p) was added by Senate Bill (S.B.) 207, 85th Legislature, 2017 to require HHSC and

the Office of Inspector General (OIG) to adopt rules establishing criteria for opening, prioritizing, and closing cases. Accordingly, HHSC and OIG adopted rule §371.1305, which established the criteria mandated by the statute. In its report to the 85th Legislature in February 2017, the Sunset Commission noted agency implementation as partially complete and recommended that OIG adopt rules relating to prioritizing recipient cases and guiding field investigators in closing cases.

As recommended by the Sunset Commission, the proposed amendments and the new rule formalize criteria for prioritizing and closing cases. The amendments and the new rule delineate inclusive lists of specific criteria that will be considered by investigators when they consider whether a particular preliminary, full-scale, or recipient investigation should be closed. In the case of preliminary investigations, investigators also consider this criteria when deciding whether a case should be pursued as a full-scale investigation. In addition, the new rule requires that recipient cases be prioritized according to the highest potential for recovery and federal timeliness requirements.

These proposed amendments do not change OIG's approach to opening, closing, and prioritizing investigations, they only provide more detail as to the criteria that the agency's investigators apply when they evaluate a recipient case or whether a case should be closed.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §371.1305 adds a new section (e), which delineates an inclusive list of criteria that OIG may consider when determining whether to close a preliminary investigation. The current section (e) is relettered to section (f), and current section (f) is relettered to section (g).

Proposed amendment to §371.1307 adds a new section (b), which delineates an inclusive list of criteria that OIG may consider when determining whether to close a full-scale investigation. The current section (b) is relettered to section (c), current section (c) is relettered to section (d), and current section (d) is relettered to section (e).

Proposed new §371.1312 delineates a list of factors OIG considers when prioritizing recipient cases, as well as an inclusive list of criteria that OIG may consider when determining whether to close a recipient case.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the sections will be in effect, there is no anticipated impact to costs or revenues of state or local governments from enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the amended and new rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rulemaking will create a new rule;

- (6) the proposed rules will not expand any existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Ms. Rymal has also determined that there is no adverse economic impact to small businesses, micro-businesses, or rural communities related to the rule, as there are no requirements to change current business practices. The proposed changes reflect inclusion of details recommended by the Sunset Commission during its latest review.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT

Anne Dvorak, Director of Program Integrity Development and Support, HHSC-OIG Medicaid Program Integrity and Medical Services Division, and Lizet Hinojosa, Deputy Inspector General, HHSC-OIG Benefits Program Integrity Division, have determined that for each year of the first five years the amended rules and new rule are in effect, the public will benefit from adoption of the amended rules and the new rule. The public benefit anticipated as a result of enforcing or administering the amended rules and new rule will be increased clarity for Texas Medicaid managed care organizations (MCOs) and Texas Medicaid providers regarding the criteria OIG uses to close preliminary, full-scale, and recipient investigations.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or e-mailed to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) e-mailed by midnight on the last day of the comment period. When e-mailing comments, please indicate "Comments on Proposed Rule 18R070" in the subject line.

STATUTORY AUTHORITY

The amendments and new rule are authorized by Texas Government Code §531.0055, which provides the HHSC Executive Commissioner the authority to adopt rules for the operation and provision of services by the health and human services agencies; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; Texas Government Code §531.033, which grants the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with HHSC-OIG to adopt rules necessary to implement a power or duty of HHSC-OIG; Texas Government Code §531.102(a), which grants HHSC-OIG the responsibility to conduct reviews of fraud, waste, and abuse in the provision and delivery of all health and human services in the state, including services through any state-administered health or human services program that is wholly or partly federally funded; and Texas Government Code §531.102(p), which requires HHSC and the Office of Inspector General (OIG) to adopt rules establishing criteria for opening, prioritizing, and closing cases.

The amendments and new rule implement Texas Human Resources Code, Chapter 32; and Texas Government Code, Chapter 531.

§371.1305. Preliminary Investigation.

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

(e) In addition to the factors listed in subsection (d) of this section, the OIG may also consider the following factors in determining whether to close a preliminary investigation:

- (1) the complainant is unavailable or unwilling to cooperate;
- (2) information or evidence to substantiate the complaint is unavailable or unobtainable;
- (3) the complaint is resolved after it is filed with the OIG;
- (4) data regarding the subject of the complaint, such as claims or encounter data, does not support the allegations raised in the complaint;
- (5) an investigation, audit, inspection, or other review regarding the complaint already exists;
- (6) an analysis of the provider's billing patterns does not show that the provider's billing patterns vary significantly from those of comparable providers; or
- (7) any other relevant information or analysis the OIG deems appropriate.

(f) [(e)] Once the preliminary investigation is completed, the OIG reviews the allegations of fraud, waste, abuse, or questionable practices, and all facts and evidence relating to the allegation and prepares a preliminary report before the allegation of fraud or abuse proceeds to a full investigation. The preliminary report documents the following:

- (1) the allegation that is the basis of the report;
- (2) the evidence reviewed;
- (3) the procedures used to conduct the preliminary investigation;
- (4) the findings of the preliminary investigation; and

(5) whether a full investigation is warranted.

(g) [(f)] The OIG maintains a record of all allegations of fraud, waste, or abuse against a provider containing the date each allegation was received or identified and the source of the allegation, if available. This record is confidential under Texas Government Code §531.1021(g) and subject to Texas Government Code §531.1021(h).

§371.1307. Full Investigation.

(a) (No change.)

(b) The OIG may close a full investigation for one or more of the following reasons, if the OIG determines that:

(1) the investigative research and evidence gathered during the full investigation indicates that fraud, waste, or abuse is not present;

(2) there is no violation of Medicaid policy;

(3) there is no overpayment to recover;

(4) the potential identified overpayment is not cost-effective to pursue;

(5) the issues related to the complaint are outside of OIG jurisdiction;

(6) a referral to the appropriate licensure or oversight agency is deemed a more appropriate action;

(7) the case should be referred to another division of OIG for action;

(8) the provider should receive education;

(9) the Medicaid provider is deceased or out of business;

or

(10) no administrative action, sanction, or overpayment is appropriate after weighing the following factors:

(A) the seriousness of the allegations and potential program violations;

(B) the investigative resources available to pursue the full investigation; and

(C) the sufficiency and strength of evidence gathered in the full investigation.

(c) [(b)] A full investigation must be completed within 180 days unless the OIG determines that more time is needed to complete the investigation.

(d) [(e)] If the OIG determines that more time is needed to complete the investigation, the OIG must notify the provider who is the subject of the investigation indicating that the investigation will exceed 180 days and specifying the reasons the OIG is unable to complete the investigation within the 180-day time period. However, the OIG is not required to notify the provider if the OIG determines that notice would jeopardize the investigation.

(e) [(d)] Within 30 days of completion of the preliminary investigation, the OIG refers the case to the state's Medicaid fraud control unit if a provider is suspected of fraud, waste, or abuse involving criminal conduct or if the OIG learns or has reason to suspect that a provider's records are being withheld, concealed, destroyed, fabricated, or in any way falsified. This referral does not preclude the OIG from continuing its investigation of the provider.

§371.1312. Recipient Investigations.

(a) The OIG may consider the following factors when opening and prioritizing recipient cases for the efficient management of the OIG's workload:

(1) the highest potential for recovery;

(2) applicable federal timeliness requirements;

(3) initial screening information obtained to support the allegation raised in the complaint;

(4) whether allegations in the complaint are violations of applicable agency policy, law or regulations; and

(5) any other relevant information or analysis the OIG deems appropriate.

(b) The OIG may consider the following factors in determining whether to close a recipient investigation:

(1) the investigation has been open for 180 days or longer, unless the OIG determines that more time is needed to complete the investigation;

(2) information or evidence to substantiate the complaint is unavailable or unobtainable;

(3) evidence regarding the subject of the complaint does not support the allegations raised in the complaint;

(4) an investigation, audit, inspection, or other review regarding the complaint already exists; or

(5) any other relevant information or analysis the OIG deems appropriate.

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

Filed with the Office of the Secretary of State on March 8, 2019.

TRD-201900778

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 491-4052



1 TAC §371.1311

The Texas Health and Human Services Commission (HHSC) proposes amendments to §371.1311, concerning the role of the Office of the Inspector General (OIG) and special investigative units (SIUs).

BACKGROUND AND PURPOSE

The purpose of the amendments is to implement various provisions of House Bill (H.B.) 2379, 85th Legislature, Regular Session, 2017, and update procedures which managed care organizations (MCOs) must follow to refer cases to the HHSC Office of the Inspector General (HHSC-OIG).

H.B. 2379 amended Texas Government Code, Chapter 531 regarding the recovery and retention of funds paid to providers as a result of fraud or abuse. The bill allows MCOs to retain half of the funds they recover under certain circumstances, and remit the remainder to HHSC-OIG for deposit in the general revenue fund. When HHSC-OIG pursues fraud or abuse cases referred to it by an MCO, the MCO is entitled to half of the money recovered for each payment the MCO reported in detail, less any applicable federal share. The remainder of the recovered funds are deposited in the general revenue fund by HHSC-OIG. In addition, the bill requires HHSC-OIG and the MCOs to coordinate

efforts to ensure that payment efforts for the same case of waste, abuse, or fraud are not duplicated.

SECTION-BY-SECTION SUMMARY

Proposed amendment to §371.1311(a) replaces references to "fraud, waste, or abuse" with references to "waste, abuse, or fraud" and adds language for MCOs to refer confirmed investigations to HHSC-OIG in accordance with §353.505 (relating to Recovery of Funds).

Proposed amendment to §371.1311(b) adds language referencing §353.505, which requires MCOs to remit one-half of the recovered funds to HHSC-OIG.

FISCAL NOTE

Ms. Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years that the section will be in effect, there may be an anticipated fiscal impact to costs and revenues of state government as a result of enforcing and administering the section as proposed. This rule is the result of changes made in the statute and could increase revenue to the State by requiring MCOs to remit one-half of the funds they recover as a result of abuse or fraud investigations to HHSC-OIG in certain cases. There is insufficient data to estimate the net change in revenue at this time as the number of investigations and total recoupments will vary.

There is no anticipated fiscal impact to local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of employee positions;
- (3) implementation of the proposed rule will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to the agency;
- (5) the proposed rule will not create a new rule;
- (6) the proposed rule will not expand, limit, or repeal an existing rule;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Ms. Rymal has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. None of the MCOs are small-businesses, micro-businesses, or rural communities.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There is an anticipated economic cost to persons who are required to comply with the sections as proposed. The proposed rule reduces the allowed MCO retention of recovered funds, resulting from fraud or abuse, and requires submission of one-half of those funds to the HHSC-OIG in certain cases. HHSC lacks sufficient data to provide an estimate of the cost to comply.

There is no anticipated negative impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT

Anne Dvorak, Director of Program Integrity Development and Support, HHSC-OIG Medicaid Program Integrity and Medical Services Division, has determined that for each year of the first five years the amended rules are in effect, the public will benefit from adoption of the amended rules. The public benefit anticipated as a result of enforcing or administering the amended rules will allow HHSC-OIG to coordinate payment recovery efforts and to ensure that MCOs adequately investigate potential waste, abuse, and fraud; report improper payments; and remit appropriate payment to the HHSC-OIG, thus strengthening Medicaid program integrity.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to the HHS Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 11501 Burnet Road, Building 902, Austin, Texas 78758; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed by midnight on the last day of the comment period. When emailing comments, please indicate "Comments on Proposed Rule 18R069" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and §531.1131(e), which requires the Executive Commissioner of HHSC to adopt rules necessary to implement the law regarding payment recovery efforts, including procedures that must be followed by an MCO when engaging in payment recovery efforts; and Texas 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 implements Texas Government Code, §§531.033, 531.1131(e) and 531.021, and Texas Human Resources Code, §32.021.

§371.1311. *Role of the OIG and SIUs.*

(a) An MCO is required by §353.502 of this title (relating to Managed Care Organization's Plans and Responsibilities in Preventing and Reducing Waste, Abuse, and Fraud) and §370.501 of this title (re-

lating to Purpose) to establish and maintain an SIU to investigate allegations of waste, abuse, or fraud [~~fraud, waste, or abuse~~] for all services in the MCO plan. If an MCO suspects possible ~~waste, abuse, or fraud~~ [~~fraud, waste, or abuse~~], the MCO must conduct a preliminary investigation in accordance with criteria in §353.502 and §370.501 of this title. If the preliminary investigation confirms ~~waste, abuse, or fraud~~ [~~fraud, waste, or abuse~~], the MCO must refer the matter to the OIG in accordance with §353.505 of this title (relating to Recovery of Funds).

(b) For a potential overpayment amount less than \$100,000, the MCO pursues recovery of the overpayment, and remits one-half of the recovered amount in accordance with §353.505 of this title (relating to Recovery of Funds).

(c) - (d) (No change.)

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

Filed with the Office of the Secretary of State on March 6, 2019.

TRD-201900769

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 491-4052



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 53. REGIONAL EDUCATION SERVICE CENTERS

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §53.1001

The Texas Education Agency (TEA) proposes an amendment to §53.1001, concerning regional education service centers (RESCs). The proposed amendment would specify that a board of trustees member for a RESC may not be engaged professionally in Kindergarten-Grade 12 education.

BACKGROUND INFORMATION AND JUSTIFICATION: The Texas Education Code (TEC), §8.003, requires the commissioner to adopt rules concerning the selection of members of the boards of trustees for RESCs. To implement the statute, 19 TAC §53.1001 sets out the requirements for members of the board of directors of RESCs, including the term of office, election procedures, and eligibility criteria for members. The proposed amendment would update the eligibility criteria in subsection (b)(1) to specify that a member of an RESC board of directors may not be engaged professionally in Kindergarten-Grade 12 education. This amendment would avoid a conflict of interest while allowing more individuals with experience in education to serve on RESC boards of directors.

FISCAL IMPACT: Megan Aghazadian, deputy commissioner for operations, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would increase the number of individuals subject to its applicability. The amendment would allow individuals professionally engaged in higher education to serve as board members for RESCs.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Aghazadian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be allowing more individuals with experience in education to serve as members of RESC boards of directors without creating a conflict of interest. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 22, 2019, and ends April 22, 2019. 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 March 22, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code, §8.003, which requires the commissioner to adopt rules concerning the selection of members of the boards of trustees for regional education service centers.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §8.003.

§53.1001. *Board of Directors.*

(a) Term of office.

(1) A member of a regional education service center (RESC) board of directors shall be elected for a three-year term. The term of office shall begin June 1.

(2) If a vacancy occurs due to death or resignation of a member of an RESC board of directors, a 30-day period shall elapse, after notice has been given to the board chair, before the vacancy is filled.

(3) At the beginning of the 30-day period, notice of any vacancy shall be given to the president of the board of trustees and the superintendent of each school district in the education service center region and shall be posted in appropriate locations.

(4) A vacancy for the unexpired term of a member of an RESC board of directors shall be filled by appointment by the remaining board members.

(b) Election procedures.

(1) A member of an RESC board of directors must be a United States citizen, at least 18 years of age, and a resident of that education service center region. He or she may not be engaged professionally in Kindergarten-Grade 12 education or be a member of a board of any educational agency or institution other than the State Board of Education. The eligibility of an RESC board member under this subsection is determined by the requirements specified in this subsection as they existed on the date the RESC board member was elected or appointed to office.

(2) A member of an RESC board of directors shall be elected by the boards of trustees of the school districts in that education service center region.

(3) Any eligible person wishing to seek election to an RESC board of directors shall file at the headquarters of that RESC in person or by certified mail between February 1 and February 20. No filing fee shall be required. Each RESC board of directors shall adopt policies concerning filing procedures.

(4) By February 1, notice of the time and place for filing shall be posted in appropriate locations and submitted to appropriate newspapers in the education service center region for publication and to the superintendent of each school district in the education service center region.

(5) A ballot shall be developed and submitted to the board of trustees of each school district in the education service center region by March 1. Placement on the ballot shall be determined by drawing. Each member of the board of trustees of each school district in the education service center region shall have one vote for each vacancy on the RESC board of directors. Completed ballots shall be returned to the chair of the RESC board of directors by April 5. The RESC board of directors shall canvass the ballots at its next regularly scheduled or special meeting, but not later than May 31, and determine the winner by a plurality of the votes cast. In the event of a tie, the names of the candidates who have tied shall be resubmitted to the board of trustees of each school district in the education service center region.

(6) The provisions described in subsection (b)(2) and (5) of this section do not apply if all positions in the election are uncontested. In the event of an uncontested election, the RESC board of directors may determine that no election will be held. The RESC board of directors must make this determination prior to March 1. If, due to an uncontested election, the RESC board of directors determines that an election should not be held, the RESC board shall declare the unopposed candidates elected to office. The RESC executive director shall notify the commissioner of education of the results of an election, whether contested or uncontested.

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

Filed with the Office of the Secretary of State on March 11, 2019.

TRD-201900785

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 475-1497



CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING IMPLEMENTATION OF
THE ACADEMIC CONTENT AREAS TESTING
PROGRAM

DIVISION 4. PERFORMANCE STANDARDS

19 TAC §101.3041

The Texas Education Agency (TEA) proposes an amendment to §101.3041, concerning performance standards. The proposed amendment would delete language regarding Texas Assessment of Knowledge and Skills (TAKS) performance standards since Senate Bill (SB) 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, no longer require this assessment to be administered.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 101.3041 establishes the level of performance considered to be satisfactory on state-developed assessments, as required by TEC, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

The proposed amendment to §101.3041 would delete subsection (d) and the corresponding figure, which reference TAKS performance standards. With the implementation of SB 463 and SB 1005, 85th Texas Legislature, Regular Session, 2017, TAKS is no longer being administered. As such, performance standards for this assessment program are no longer required. Previous assessment results for TAKS can be obtained through the assessment vendor, if needed. Students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year who had TAKS as a graduation requirement have other options for satisfying graduation requirements as detailed in 19 TAC §74.1027, Diplomas for Certain Individuals Who Entered Grade 9 Before 2011-2012 School Year, and 19 TAC §101.4003, Texas Assessment of Knowledge and Skills Exit-Level Alternate Assessments.

FISCAL IMPACT: Jeff Cottrill, deputy commissioner for academics standards and engagement, has determined that for the first five-year period the proposal is in effect there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Cottrill has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law and assessments. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: The TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins March 22, 2019, and ends April 22, 2019. 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 March 22, 2019. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Proposed_Commissioner_of_Education_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/). Comments on the proposal may also be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §39.0241(a), which requires the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; and TEC, §39.025(f-1), which requires the commissioner to establish satisfactory performance levels on alternate assessments to satisfy graduation requirements for students who entered Grade 9 prior to the 2011-2012 school year or Grade 10 or above in the 2011-2012 school year. The commissioner is not required after September 1, 2017, to maintain and administer the Texas Assessment of Knowledge and Skills.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §39.0241(a) and §39.025(f-1).

§101.3041. *Performance Standards.*

(a) The commissioner of education shall determine the level of performance considered to be satisfactory on the assessment instruments. The figures in this section identify the performance standards established by the commissioner for state-developed assessments, as required by the Texas Education Code, Chapter 39, Subchapter B, for all grades, assessments, and subjects.

(b) The figures in this subsection identify the performance standards established by the commissioner for the State of Texas Assessments of Academic Readiness (STAAR®) general and alternate assessments at Grades 3-8.

(1) The figure in this paragraph identifies the STAAR® general education performance standards at Grades 3-8.
Figure: 19 TAC §101.3041(b)(1) (No change.)

(2) The figure in this paragraph identifies the STAAR® Alternate 2 performance standards at Grades 3-8.
Figure: 19 TAC §101.3041(b)(2) (No change.)

(c) For students first enrolled in Grade 9 or below in the 2011-2012 school year, the figures in this subsection identify the performance standards established by the commissioner for the STAAR® end-of-course (EOC) general and alternate assessments. The standard in place when a student first takes an EOC assessment is the standard that will be maintained on all EOC assessments throughout the student's high school career.

(1) The figure in this paragraph identifies the EOC general education assessment performance standards.
Figure: 19 TAC §101.3041(c)(1) (No change.)

(2) The figure in this paragraph identifies the EOC alternate assessment performance standards.
Figure: 19 TAC §101.3041(c)(2) (No change.)

[(d) For students who were first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year, the figure in this subsection identifies the performance standards established by the commissioner for the Texas Assessment of Knowledge and Skills exit level. The exit-level standard in place when a student enters Grade 10 is the standard that will be maintained throughout the student's high school career.]
[Figure: 19 TAC §101.3041(d)]

(d) [(e)] The Texas Education Agency shall post annually to its website a 100-point score conversion table after the STAAR® assessment spring administrations. The 100-point scale is defined using percentiles, which represent the percentage of students across the state that took the assessment and received a scale score less than the scale score of interest. The percentile is based on the performance of students who took the paper, online, Braille, and L versions of the assessment during the spring administration of any given year.

(1) The following formula is used to calculate the percentile $p(S)$ for a scale score S : $p(S) = x/N \times 100$.

(2) In the formula in paragraph (1) of this subsection, N is the total number of students who took the tests, and x is the number of students with scale scores less than S . If the calculated percentile is not a whole number, then it is rounded down to the closest whole number.

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

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes the repeal of and new §§146.1 - 146.8, concerning Training and Regulation of Promotores or Community Health Workers.

BACKGROUND AND PURPOSE

Texas Health and Safety Code, Chapter 48, requires DSHS to establish a program designed to train and educate persons who act as promotores or community health workers. This chapter also states that the executive commissioner of HHSC shall adopt rules that provide minimum standards and guidelines for issuance of a certificate for persons who act as promotores or community health workers. A promotor(a), or community health worker, is a member of the community who acts as a liaison between patients and health care providers through (among other things) patient education, referrals, home visits, or bilingual language services.

The proposed repeal of and new §§146.1 - 146.8 will streamline language regarding the certification and re-certification of promotores or community health workers, instructors, and training programs through removal of policy-related text in rule language. Moving specific language to program policy allows the Promotor(a) or Community Health Worker Training and Certification Program to stay current with professional recommendations by allowing flexibility to amend policy accordingly should there be changes in those professional recommendations.

SECTION-BY-SECTION SUMMARY

Proposed new §146.1 updates the definitions as they relate to the chapter.

Proposed new §146.2 describes applicability of the chapter and includes an exemption for DSHS and HHSC programs to provide approved certified continuing education.

Proposed new §146.3 describes the operation and responsibilities of the Promotor(a) or Community Health Worker Training and Certification Advisory Committee. The proposed rule increases the number of promotores or community health workers on the committee from four to five and requires at least one officer position to be held by a promotor(a) or community health worker. The proposed changes include review requirements of the committee, committee tasks, applicable law, and reporting requirements.

Proposed new §146.4 clarifies certification requirements for training programs and reflects a move of the application and curriculum specifics to policy, and adds training program responsibilities.

Proposed new §146.5 describes eligibility requirements related to residency and age for certified instructors; the time required for completion of training or experience; reduction in the length of an extension to complete continuing education; and removal of specifics for continuing education.

Proposed new §146.6 describes eligibility requirements related to residency and age for certified promotores or community health workers; the time frame required for completion of training or experience; reduction in the length of an extension to complete continuing education; and removal of specifics for continuing education.

Proposed new §146.7 establishes the standards of professional and ethical conduct required of a training program, instructor, or promotor(a) or community health worker.

Proposed new §146.8 describes enforcement of this chapter.

The proposed repeal of §§146.1 - 146.8 deletes the rules in their entirety in order to incorporate the content in the proposed new §§146.1 - 146.8.

FISCAL NOTE

Donna Shepard, Chief Financial Officer, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of employee positions;
- (3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to the agency;
- (5) the proposed rules will create new rules;
- (6) the proposed rules will repeal existing rules;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Donna Sheppard, Chief Financial Officer, has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

COSTS TO REGULATED PERSONS

Texas Government Code, §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons; are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules; and is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT

Dr. Manda Hall, Associate Commissioner, has determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be clarity regarding qualifications, requirements, and expectations for certification and recertification of promotores or community health workers, instructors, and training programs.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Adriana Flores at (512) 776-3860 in the DSHS Promotor(a) or Community Health Worker Training and Certification Program.

Written comments on the proposal may be submitted to Adriana Flores, Program Coordinator, Texas Department of State Health Services, Mail Code 1945, P.O. Box 149347, Austin, Texas 78714-9347 or street address 1100 West 49th Street, Austin, Texas 78756; or by email to chw@dshs.texas.gov within 30 days of publication of this proposal in the *Texas Register*.

To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. If the last day to submit comments falls on a weekend or holiday, comments that are postmarked, shipped, or emailed before midnight on the following business day will be accepted. When emailing comments, please indicate "Comments on Proposed Rule 18R063" in the subject line.

25 TAC §§146.1 - 146.8

STATUTORY AUTHORITY

The repeals are authorized by the Texas Health and Safety Code, §48.053, which authorizes the Executive Commissioner of the HHSC to adopt rules and policies necessary for the implementation of the training and certification program for

promotores, community health workers, and instructors; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The repeals implement Texas Health and Safety Code, Chapters 48 and 1001; and Texas Government Code, Chapter 531.

§146.1. *Definitions.*

§146.2. *Applicability.*

§146.3. *Promotor(a) or Community Health Worker Training and Certification Advisory Committee.*

§146.4. *Application Requirements and Procedures for Sponsoring Organizations.*

§146.5. *Eligibility Requirements and Application Procedures for Community Health Worker Instructors.*

§146.6. *Eligibility Requirements and Application Procedures for Promotores or Community Health Workers.*

§146.7. *Professional and Ethical Standards.*

§146.8. *Violations, Complaints and Subsequent Actions.*

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

Filed with the Office of the Secretary of State on March 6, 2019.

TRD-201900766

Barbara Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 776-3860



25 TAC §§146.1 - 146.8

STATUTORY AUTHORITY

The new sections are authorized by the Texas Health and Safety Code, §48.053, which authorizes the Executive Commissioner of the HHSC to adopt rules and policies necessary for the implementation of the training and certification program for promotores, community health workers, and instructors; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code, Chapter 1001.

Texas Government Code, §531.0055, authorizes the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services.

The new sections implement Texas Health and Safety Code, Chapters 48 and 1001; and Texas Government Code, Chapter 531.

§146.1. *Definitions.*

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

(1) Applicant--A person who applies to the department for a certificate of competency as a promotor(a) or community health worker, an instructor, or a training program.

(2) Certificate--Certificate issued to a promotor(a) or community health worker, instructor, or training program by the department.

(3) Certified Training Curriculum--An educational, community health training curriculum approved by the department for the purpose of training promotores or community health workers or instructors.

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

(5) Commissioner--The Commissioner of the Department of State Health Services.

(6) Committee--Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

(7) Compensation--Receiving payment or receiving reimbursement for expenses.

(8) Core Competencies--Key skills for a promotor(a) or community health worker required for certification by the department as listed in policy at www.dshs.texas.gov.

(9) Department--The Department of State Health Services.

(10) Executive Commissioner--The Executive Commissioner of the Texas Health and Human Services Commission.

(11) Instructor--A person certified by the department to provide instruction and training in one or more core competencies to promotores or community health workers.

(12) Program--The Promotor(a) or Community Health Worker Training and Certification Program established by the department to provide standards and guidelines for issuance of a certificate.

(13) Promotor(a) or Community Health Worker--A person who, with or without compensation, provides a liaison between health care providers and patients through activities such as assisting in case conferences, providing patient education, making referrals to health and social services, conducting needs assessments, distributing surveys to identify barriers to health care delivery, making home visits, and providing bilingual language services.

(14) Training program--An organization approved by the department to deliver a certified training curriculum to promotores or community health workers or instructors.

§146.2. *Applicability and Exemption.*

(a) The provisions of this chapter apply to:

(1) a training program that delivers a certified training curriculum for promotores or community health workers;

(2) an instructor representing that the instructor trains promotores or community health workers; or

(3) a promotor(a) or community health worker representing that the promotor(a) or community health worker performs as a certified promotor(a) or community health worker.

(b) Certification under this chapter is voluntary for a promotor(a) or community health worker who provides services without receiving compensation and mandatory for a promotor(a) or community health worker who provides services for compensation.

(c) Application and certification procedures are outlined in policy and can be found online at www.dshs.texas.gov.

(d) The department or commission may develop a specialty certification and continuing education for promotores or community health workers or instructors that may be certified by the department directly.

§146.3. *Promotor(a) or Community Health Worker Training and Certification Advisory Committee.*

(a) Committee. The committee is established by the department under Health and Safety Code, §48.101.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees. In accordance with Section 2110.006, the department evaluates the committee annually. If the committee is not continued or consolidated, the committee shall be abolished on August 31, 2023.

(c) Purpose and tasks.

(1) The committee shall advise the department and the commission on the implementation of standards, guidelines, and requirements relating to the training and regulation of persons working as promotores or community health workers.

(2) The committee shall advise the department on matters related to the employment and funding of promotores or community health workers.

(3) The committee shall provide to the department recommendations for a sustainable Program for promotores or community health workers.

(d) Composition. The committee shall be composed of nine members appointed by the Commissioner from the following categories:

(1) five promotores or community health workers currently certified by the department;

(2) one public member, which may include a consumer of community health worker services or a person with paid or volunteer experience in community health care or social services;

(3) one member from the Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public health or adult education and has trained promotores or community health workers; and

(4) two professionals who work with promotores or community health workers in a community setting, including employers and representatives of non-profit community-based organizations or faith-based organizations.

(e) Terms of office. The term of office of each member shall be three years, and a member may apply to be reappointed for up to one additional term.

(1) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on August 31st of each year.

(f) Officers. The Commissioner shall appoint a member of the advisory committee as presiding officer after August 31st of each year.

(1) The committee may elect a member of the advisory committee as an assistant presiding officer.

(2) An officer position, either presiding or assistant presiding officer, must be occupied by a promotor(a) or a community health worker member.

(3) Each officer shall serve until the next appointment of officers.

(4) The presiding officer shall preside at all committee meetings at which the presiding officer is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the Executive Commissioner. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(5) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until the Commissioner appoints a successor to complete the unexpired portion of the term of the office of presiding officer.

(6) A member shall serve no more than two consecutive terms as an officer of the committee.

(7) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(g) Meetings. The committee shall meet quarterly to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Department staff makes meeting arrangements and contacts committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Government Code, Chapter 551. The committee is not a "governmental body" as defined in the Open Meetings Act. Meetings may be conducted in person, through conference call, or by means of other technology.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) Five members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present, as specified in paragraph (3) of this subsection.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to the business of the committee. Public comment procedures shall be in accordance with Health and Human Services policy.

(h) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

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

(2) It is grounds for removal from the committee if a member:

(A) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability;

(B) is absent from more than half of the committee and subcommittee meetings during a calendar year; or

(C) is absent from three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(i) Staff. The department provides staff support for the committee.

(j) Procedures. Committee bylaws shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) An action taken by the committee must be approved by a majority vote of the members voting once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another person to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) The department staff will take minutes of each committee meeting and the committee will review the minutes for possible approval at the next scheduled meeting.

(k) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees. Subcommittee members shall serve for a term of one year expiring August 31.

(2) Subcommittees shall be composed of no more than four members of the committee and no more than three nonmembers. The committee shall maintain a roster of each subcommittee.

(3) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(4) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(l) Statement by members.

(1) The Executive Commissioner, the Commissioner, the department, and the committee shall not be bound in any way by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the Executive Commissioner, the Commissioner, the department, or committee.

(2) The committee and its members shall follow the policy and provisions as outlined in the statement by members document in accordance with adopted committee bylaws.

(m) Reports. The committee shall prepare and file an annual written report with the Commissioner.

(1) The report shall list:

(A) the meeting dates of the committee and any subcommittees;

(B) the attendance records of its members;

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

(D) a description of how the committee has accomplished the tasks given to the committee by the department and the commission;

(E) anticipated activities of the committee for the next year; and

(F) any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee.

(3) The report shall cover the meetings and activities in the immediate preceding calendar year and shall be filed with the Commissioner by April 30 of each year.

(n) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a committee member may receive reimbursement for the member's travel expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process. The committee shall follow reimbursement requirements as outlined in the committee bylaws.

§146.4. Certification of Training Programs.

(a) Minimum eligibility requirements for training programs. The following requirements apply to organizations applying for certification:

(1) physical location in Texas;

(2) experience in training promotores or community health workers, health care professionals, or paraprofessionals and training experience within the past two years and related to the core competencies; and

(3) affiliation with one or more instructors currently certified by the department.

(b) Application requirements for training programs. The department specifies the required information and documentation that an applicant shall complete and notifies the applicant if the application is incomplete.

(c) Application approval. The department approves an application which complies with the requirements set in policy and which properly documents applicant eligibility.

(d) Disapproved applications.

(1) The department may disapprove an application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit required information or has knowingly presented false or misleading information in the application process.

(2) If the department determines that an application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.

(3) An applicant whose application has been disapproved for a reason other than that it is incomplete may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Changes of name and address. Training programs shall notify the department of changes in organization name, contact informa-

tion, mailing address, or physical location within 30 calendar days after the change.

(f) Certificate.

(1) Upon approval of the application, the department issues the training program a certificate with an expiration date and a certificate number.

(2) The department replaces a lost, damaged, or destroyed certificate upon written request.

(g) Standards for the approval of certification and continuing education curricula. Training programs shall follow the guidelines set in policy regarding standards for certification and continuing education curricula for promotores or community health workers or instructors.

(h) Training program responsibilities. A training program shall:

(1) submit an addendum, in a format specified by the department and in compliance with policy, when revising a current, certified curriculum;

(2) ensure curricula are provided by a certified instructor, unless otherwise approved by the department;

(3) provide training to promotores or community health workers or instructors as applicable to the training program's certifications that includes:

(A) at least one certification course per year; and

(B) at least one continuing education course per certification cycle;

(4) report the names of persons to the department who have successfully completed the training program within seven business days of program completion in a format specified by the department; and

(5) maintain an accurate record of each person's attendance and participation for not less than three years.

(i) Certificate renewal.

(1) A training program shall renew the certificate every two years in accordance with policy. Failure to receive notification from the department before the expiration date will not excuse failure to file for renewal.

(2) Failure to meet the requirements in subsection (h)(3) of this section shall result in denial of the certificate renewal.

(j) Late renewals.

(1) A training program whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. The training program shall not provide training for community health workers or instructors until the certificate has been renewed. A certificate not renewed within one year after expiration cannot be renewed.

(2) A training program whose certification has been expired for more than one year must meet the requirements under subsection (a) of this section and apply for a new certificate.

(k) Right to inspect. The department reserves the right to inspect facilities and documentation and to monitor training programs.

§146.5. Eligibility Requirements and Application Procedures for Community Health Worker Instructors.

(a) Minimum eligibility requirements for instructor certification. The following requirements apply to persons applying for certification:

- (1) Texas residency;
- (2) at least 18 years of age;

(3) lack of physical or mental impairment, which in accordance with the Americans with Disabilities Act interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served; and

(4) achievement of core competencies in instruction or training as identified in policy through completion of certified competency-based instructor training within the past three years or through department verification of at least 1,000 hours related training experience within the past three years.

(b) Application requirements for instructors. The department specifies the required information and documentation that an applicant shall complete and the department notifies the applicant if the application is incomplete.

(c) Application approval. The department approves any application which complies with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) has failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in the application process;

(C) has engaged in unethical conduct as defined in §146.7 of this chapter (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.8 of this chapter (relating to Enforcement); or

(E) has developed an incapacity which in accordance with the Americans with Disabilities Act prevents the person from practicing with reasonable skill, competence, and safety to the public as the result of:

- (i) an illness;
- (ii) drug or alcohol dependency; or
- (iii) another physical or mental condition or illness.

(2) If the department determines that the application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.

(3) If the department determines that the application should not be approved because experience requirements are not met, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application after sufficient experience is obtained.

(4) An applicant whose application has been disapproved for a reason other than paragraph (2) or (3) in this subsection, may ap-

peal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Changes of name and address.

(1) The department changes the status of a certification to inactive upon receipt of notification that the certificate holder no longer lives in Texas.

(2) Notification of name changes shall be submitted to the department and include a copy of a marriage certificate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name before a certificate or identification card is issued by the department.

(f) Certificate.

(1) The department issues the instructor a certificate with an expiration date and a certificate number. An identification card shall be included for a certified instructor.

(2) The department replaces a lost, damaged, or destroyed certificate or identification card upon written request.

(g) An instructor must be affiliated with an approved training program in order to provide department-certified training to certified promotores or community health workers or instructors.

(h) Certificate renewal.

(1) An instructor shall renew the certificate every two years in accordance with policy. Failure to receive notification from the department before the expiration date will not excuse failure to file for renewal.

(2) An instructor must complete at least 20 contact hours of continuing education acceptable to the department and related to the core competencies during each certification period.

(3) Before certificate expiration, an instructor may request one 90-day extension to complete the continuing education requirement and apply for certificate renewal.

(i) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. An instructor must submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A person whose certification has been expired for more than one year must meet the requirements under subsection (a) of this section and apply for a new certificate.

§146.6. Eligibility Requirements and Application Procedures for Promotores or Community Health Workers.

(a) Minimum eligibility requirements for promotor(a) or community health worker certification. The following requirements apply to persons applying for certification:

- (1) Texas residency;
- (2) at least 16 years of age;

(3) lack of physical or mental impairment, which in accordance with the Americans with Disabilities Act interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served; and

(4) achievement of core competencies identified in policy through completion of a certified competency-based training provided

by an approved training program within the past three years or through verification of at least 1,000 hours of related experience within the past three years.

(b) Application requirements for a promotor(a) or community health worker. The department specifies the required information and documentation that an applicant shall complete and the department notifies the applicant if the application is incomplete.

(c) Application approval. The department approves any application which complies with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection (d) of this section.

(d) Disapproved applications.

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter;

(B) has failed or refused to properly complete or submit any required information or has knowingly presented false or misleading information in the application process;

(C) has engaged in unethical conduct as defined in §146.7 of this chapter (relating to Professional and Ethical Standards);

(D) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.8 of this chapter (relating to Enforcement); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act prevents the person from practicing with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness.

(2) If the department determines that the application should not be approved because it is incomplete, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application.

(3) If the department determines that the application should not be approved because experience requirements are not met, the department gives the applicant written notice of the reason for the disapproval and the opportunity for re-application after sufficient experience is obtained.

(4) An applicant whose application has been disapproved for a reason other than paragraph (2) or (3) of this subsection, may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(e) Changes of name and address.

(1) The department changes the status of a certification to inactive upon receipt of notification that the certificate holder no longer lives in Texas.

(2) Notification of name changes must be submitted to the department and include a copy of a marriage certificate, court decree evidencing such change, Texas driver's license or identification card, or a social security card reflecting the new name before a certificate or identification card is issued by the department.

(f) Certificate.

(1) The department issues the promotor(a) or community health worker a certificate with an expiration date and a certificate number. An identification card shall be included for a promotor(a) or community health worker.

(2) The department replaces a lost, damaged, or destroyed certificate or identification card upon written request.

(g) Certificate renewal.

(1) A promotor(a) or community health worker shall renew the certificate every two years in accordance with policy. Failure to receive notification from the department before the expiration date will not excuse failure to file for renewal.

(2) A promotor(a) or community health worker must complete at least 20 contact hours of continuing education acceptable to the department and related to the core competencies during each certification period.

(3) Before certificate expiration, a promotor(a) or community health worker may request one 90-day extension to complete the continuing education requirement and apply for certificate renewal.

(h) Late renewals.

(1) A person whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. A promotor(a) or community health worker must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A person whose certification has been expired for more than one year must meet the requirements under subsection (a) of this section and apply for a new certificate.

§146.7. Professional and Ethical Standards.

(a) A certified training program, instructor, and promotor(a) or community health worker shall observe and comply with the professional and ethical standards of practice set forth in this subchapter. A violation of the professional and ethical standards constitutes unethical conduct or conduct that discredits or tends to discredit the profession of promotores or community health workers or instructors and is grounds for disciplinary action.

(1) Professional representation and responsibilities.

(A) An instructor or promotor(a) or community health worker shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading.

(B) An instructor or promotor(a) or community health worker shall not engage in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol.

(C) An instructor or promotor(a) or community health worker shall not discriminate based on race, creed, gender, sexual orientation, religion, national origin, age, physical disability, or economic status in the performance of community health work services or training.

(D) An instructor or promotor(a) or community health worker shall maintain knowledge and skills for continuing professional competence by participating in continuing education programs and activities as set out in §146.5(h)(2) of this chapter (relating to Eligibility Requirements and Application Procedures for Community Health Worker Instructors) and §146.6(g)(2) of this chapter (relating to Eligibility Requirements and Application Procedures for Promotores

or Community Health Workers), concerning continuing education requirements.

(E) An instructor or promotor(a) or community health worker shall refrain from providing services that are outside the scope of the profession and shall refer a client for those services that the instructor or promotor(a) or community health worker is unable to meet.

(F) An instructor or promotor(a) or community health worker shall be responsible for competent and efficient performance of the instructor or promotor(a) or community health worker assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(G) An instructor or promotor(a) or community health worker shall not retaliate against any person who reported in good faith to the department alleged incompetence; misrepresentation; or illegal, unethical, or negligent conduct of any instructor or promotor(a) or community health worker.

(H) An instructor or promotor(a) or community health worker shall notify the department of changes in preferred mailing address and telephone number, and email address, if applicable.

(I) A training program shall not make any misleading, deceptive, or false representation in connection with offering or obtaining approval of a certified curriculum.

(J) A training program of a certified curriculum shall not discriminate in decisions regarding student recruitment, selection of applicants, training, or instruction based on race, creed, gender, sexual orientation, religion, national origin, age, physical disability, or economic status.

(2) Relationships with clients.

(A) An instructor or promotor(a) or community health worker shall not accept gratuities for preferential consideration of the client. The instructor or promotor(a) or community health worker shall guard against conflicts of interest.

(B) An instructor or promotor(a) or community health worker shall not violate any provision of any federal or state statute or regulation relating to confidentiality of client communication and records.

§146.8. Enforcement.

(a) The department may disapprove, suspend, or revoke a certification if the applicant or certification holder:

(1) has a criminal conviction that relates to the duties and responsibilities of a training program, instructor, or promotor(a) or community health worker, based on:

(A) the nature and seriousness of the crime;

(B) the length of time since the crime occurred;

(C) how the certification may have facilitated the crime;
and

(D) the extent to which certification could create an opportunity to engage in further criminal activity of a similar nature;

(2) falsely represents oneself as a certified training program, instructor, or promotor(a) or community health worker without a certification issued under this chapter;

(3) obtains or attempts to obtain a certification under this chapter using false information or through bribery;

(4) violates §146.7 of this chapter (relating to Professional and Ethical Standards); or

(5) has a certification in another jurisdiction denied, revoked, suspended, or otherwise subjected to adverse action.

(b) In determining enforcement under this section, the department considers:

(1) the pattern of behavior and severity of the violation;

(2) the length of time since the violation occurred;

(3) any potential harm to the public; and

(4) any previous violation by the applicant or certification holder.

(c) If the department disapproves, suspends, or revokes a certification under this section, the department gives the person written notice of the reason or reasons for the decision and the opportunity to request a fair hearing conducted under Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(d) A person whose certificate is disapproved or revoked under this section is ineligible for a certificate under this chapter for two years from the date of the disapproval or revocation. Upon disapproval, suspension, or revocation, the certificate holder shall return a certificate or an identification card to the department.

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

Filed with the Office of the Secretary of State on March 6, 2019.

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Barbara Klein

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 21, 2019

For further information, please call: (512) 776-3860



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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31 - 7.44

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Homelessness Programs, Subchapter C, §§7.31 - 7.44, Emergency Solutions Grants (ESG), with changes in the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7620). These sections will be republished. The purpose of the new sections are to provide compliance with Tex. Gov't Code §2306.094 and to update the rule to clarify the eligible uses of the grant, codify the formula utilized to allocate funds, establish selection criteria for Applications for ESG funds, outline Contract terms and requirements, and provide guidance for requirements for administration of the ESG funds.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the new rule will be in effect:

1. The new rule does not create or eliminate a government program. This rule provides for clarification and guidelines for administration of the ESG grant, and codifies requirements previously provided in notices of funding availability. Inclusion in rule allows for greater transparency, as well as consistency in administration of the grant which benefits the subrecipients and beneficiaries of the ESG Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The new rule changes do not require additional future legislative appropriations.
4. The proposed rule changes will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The rule will not limit or repeal an existing regulation, but can be considered to "expand" the existing regulations on this activity because the new rule now reflects requirements previously elaborated only in notices of funding availability and contracts. However, the added requirements were applicable through rules and contracts so are not new requirements in most cases. These changes are necessary to ensure compliance with federal requirements governing the ESG Program.

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

8. The new rule will not negatively nor positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, §2306.094.

1. The Department has evaluated this rule and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that because this rule is only applicable to nonprofits and local governments that are eligible subrecipients of ESG funds; there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because the rule only applies to administration of an established grant; therefore, no local employment is affected.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that the amount of funding is not decreased or increased, and this rule only provides clarification for administration of an existing grant program, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director,

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 the new sections will be an updated and more germane rule. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through notices of funding availability and contractual requirements.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections do not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only provides clarification for administration of an existing grant program.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and January 2, 2019. Comments regarding the proposed rule were accepted in writing and by e-mail, and no comments were received.

The Board adopted the final order adopting the new rules on February 21, 2019.

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

Except as described herein the adopted new sections affect no other code, article, or statute.

§7.31. *Purpose.*

(a) The purpose of this rule is to provide guidance and procedures for the Emergency Solutions Grant (ESG) Program as authorized by Tex. Gov't Code §2306.053. ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

(b) The regulations in this subchapter govern the administration of ESG funds and establish policies and procedures for use of ESG funds to meet the purposes contained in Title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. §§11371 - 11378) (the Act), as amended by the Homeless Emergency Assistance and Rapid Transition to Housing Act (HEARTH Act).

(c) In addition to this subchapter, an ESG Subrecipient shall comply with the regulations applicable to the ESG Program as set forth in Chapters 1 and 2 of this title (relating to Administration and Enforcement, respectively), Subchapter A of Chapter 7 of this title (relating to General Policies and Procedures) and as set forth in 24 CFR Part 91 and 24 CFR Part 576 (the Federal Regulations). ESG Subrecipients must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or supplemented.

(d) In the event that Congress, the Texas Legislature, or HUD add or change any statutory or regulatory requirements, special conditions, or waivers, concerning the use or administration of these funds, an ESG Subrecipient shall comply with such requirements at the time they become effective.

§7.32. *Use of ESG Funds.*

(a) The purpose of ESG is to assist people in regaining stability in permanent housing quickly after experiencing a housing crisis and/or Homelessness.

(b) ESG Applications for provision of Program Participant services under emergency shelter, street outreach, homeless prevention and/or rapid re-housing may include a request for funds for Homeless Management Information Systems (HMIS) activities. Applications

proposing to provide only HMIS activities are not eligible for an award of funds.

(c) Subrecipients may not Subgrant funds, but may Subcontract for the provision of services. Such Subcontracts are subject to applicable procurement requirements.

(d) The Department's Governing Board of Directors, Executive Director, or his/her designee may limit activities in a Notice of Funding Availability, or by Contract.

(e) Program Participant services may be provided under street outreach, emergency shelter, homeless prevention or rapid re-housing, as described in this subsection or otherwise permitted in Federal Regulations.

(f) The street outreach component may be provided to unsheltered Homeless persons as defined in 24 CFR §576.101(a). Eligible costs for Program Participants of street outreach include the following services:

(1) Engagement costs to locate, identify, and build relationships with unsheltered Homeless persons, including assessment of needs, crisis counseling, addressing urgent physical needs, provision of information and referrals;

(2) Case management costs to assess housing and service needs and coordinate delivery of services;

(3) Emergency health services to the extent that other health services are inaccessible or unavailable in the area;

(4) Emergency mental health services to the extent that other mental health services are inaccessible or unavailable in the area; and

(5) Transportation for outreach workers and Program Participants.

(g) The emergency shelter component may be provided to Homeless persons per 24 CFR §576.102. Eligible emergency shelter costs are for Program Participant services and costs related to the shelter building, relocation, and operation.

(1) Eligible costs for Program Participants of emergency shelter services include:

(A) Case management to coordinate individualized services;

(B) Child care for children under the age of 13, and for disabled children under the age of 18;

(C) Education services providing instruction or training to enhance their ability to obtain and maintain housing, including but not limited to literacy, English literacy, General Educational Requirement (GED) preparation, consumer education, health education, and substance abuse prevention;

(D) Employment assistance and job training services;

(E) Outpatient health services to the extent that other health services are inaccessible or unavailable in the area;

(F) Legal services, to the extent that legal services are unavailable or inaccessible within the community, to assist with housing needs, excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees;

(G) Life skills training including budgeting resources, managing money, managing a household, resolving conflict, shopping for food and need items, improving nutrition, using public transportation, and parenting;

(H) Outpatient mental health services to the extent that other mental health services are inaccessible or unavailable in the area;

(I) Outpatient substance abuse treatment services up to 30 days, excluding inpatient treatment; and

(J) Transportation for staff and Program Participants related to the provision of essential services.

(2) Eligible emergency shelter costs related to the shelter building, relocation, and operation include:

(A) Renovation, rehabilitation or conversion of buildings for use as emergency shelter;

(B) Certain costs for operation of emergency shelters, including provision of hotel or motel vouchers to Program Participants when no appropriate emergency shelter is available; and

(C) Assistance required under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(h) The homelessness prevention component may be provided to Homeless persons and persons At-risk of Homelessness per 24 CFR §576.103, and the rapid re-housing component may be provided to Homeless persons per 24 CFR §576.104. Homelessness prevention and rapid re-housing may be provided for up to 24 months of assistance in a 36-month period. Eligible costs for homelessness prevention and rapid re-housing include housing relocation and stabilization for financial assistance, housing relocation and stabilization services, and rental assistance.

(1) Housing relocation and stabilization for financial assistance include:

(A) Rental application fees;

(B) Security deposits (equal to not more than two month's rent) and last month's rent;

(C) Utility deposits and/or utility payments;

(D) Moving costs, such as truck rental or hiring a moving company. Payment of arrearages for temporary storage is not an eligible cost; and

(E) Costs to break a lease to effect an emergency transfer per 24 CFR §5.2005(e), if Program Participant is receiving rental assistance under ESG.

(2) Housing relocation and stabilization services include:

(A) Housing search and placement costs to assist in locating, obtaining, and retaining suitable permanent housing;

(B) Housing stability case management for assessing, arranging, coordinating and monitoring the delivery of individual services to facilitate housing stability;

(C) Mediation between the Program Participant and the landlord/owner to prevent loss of current housing;

(D) Legal services for housing needs excluding immigration and citizenship matters, matters related to mortgages, legal retainers and contingency fees; and

(E) Credit repair and resolution, excluding payment or modification of debts.

(3) Non-duplicative rental assistance may be provided for up to 24 months within any 36-month period. Late payment penalties during the term of assistance are not eligible ESG expenses. Rental assistance includes:

(A) Short-term rental assistance which is up to three months of rent, inclusive of arrearages, late fees, last month's rent; and

(B) Medium-term rental assistance which is more than three months of rent but not more than 24 months of rent, inclusive of up to six months of arrearages, late fees, last month's rent.

(i) Costs to participate in HMIS are eligible ESG costs. Eligible costs related to HMIS include:

(1) Hardware, software, equipment, office space, utility costs;

(2) Salary and staff costs for operation of HMIS, including technical support;

(3) HMIS training and overhead costs, including travel to HUD sponsored and approved HMIS training programs and travel costs for staff to conduct intake;

(4) HMIS participation fees charged by the HMIS lead agency; and

(5) HMIS-comparable databases for victim services providers or legal services providers.

(j) Eligible administrative costs for ESG are:

(1) General management and oversight of the ESG award, excluding cost to purchase office space;

(2) Provision of ESG training and costs to attend HUD-sponsored ESG training; and

(3) Costs to carry out required environmental reviews.

§7.33. Apportionment of ESG Funds.

(a) The Department will retain funds for Administrative activities. A portion of these Administrative funds in an amount not to exceed .25% of the Department's total allocation of ESG funds may be retained by TDHCA to procure entities to administer a Local Competition for funding within a CoC region. Funds for Administrative or Program Participant services may be retained by TDHCA to subgrant specific ESG activities, such as legal services. Additionally, if the Department receives ESG funding from HUD that has additional activity or geographic restrictions, the Department may elect not to use the Allocation Formula. Retained funds are not subject to the Allocation Formula.

(b) ESG funds not retained for the purposes outlined above will be made available by CoC region based on an Allocation Formula. Allocation Formula factors noted in paragraphs (1) - (4) of this subsection will be used to calculate distribution percentages for each CoC region as follows:

(1) Fifty percent weight will be apportioned to renter cost burden for Households with incomes less than 30% Area Median Family Income (AMFI), as calculated in the U.S. Department of Housing and Urban Development's (HUD) Comprehensive Housing Affordability Strategy;

(2) Fifty percent weight will be apportioned for the number of persons in poverty from the most recent five-year estimate of the American Community Survey released by the U.S. Census Bureau;

(3) Fifty percent weight will be apportioned to point-in-time counts, which are annual counts of sheltered and unsheltered persons experiencing homelessness on one day during the last two weeks of January as required by HUD for CoCs; and

(4) Negative 50% weight will be apportioned based on a total of all ESG funding allocated by HUD to local jurisdictions within

the CoC region, and ESG funding awarded by the Department within the region from the previous fiscal year.

(c) Each CoC region is allocated a minimum amount of \$100,000. This is accomplished by taking the amounts of all regions with over \$100,000 during the initial allocation and redistributing a proportional share to the regions with less than \$100,000. If the Department distributes by Allocation Formula less than the amount required to provide all regions with \$100,000, than the funds will be split evenly among the CoC regions.

(d) Those ESG funds allocated based on the formula in subsection (b) of this section will be made available for the provision of Program Participant services, and will be made available through a NOFA which may be released on an annual or biennial basis.

(1) Not more than 60% of allocated funds may be awarded for the provision of street outreach and emergency shelter activities.

(2) Contract funding limits include the funding request for all Program Participant services proposed in the Application, HMIS, and Administrative funds.

(A) Applicant must apply for an award amount of at least \$50,000 and not more than \$300,000 for all Program Participant services proposed in the Application.

(B) Funds awarded for HMIS are limited to 12% of the amount of funds awarded for Program Participant services.

(C) Administrative activities are limited to three percent of the amount of funds awarded for Program Participant services.

(e) ESG funds that have been deobligated by the Department or that have been voluntarily returned from an ESG Contract may be reprogrammed at the discretion of the Department, and are not included in the Allocation Formula or award process detailed in subsections (b)-(d) of this section.

§7.34. *Local Competition for Funds.*

(a) TDHCA may procure contractors for the purpose of administering a local competition within a CoC. The contractor selected will be the designated ESG Coordinator for the CoC region or CoC regions in which a contract is awarded.

(b) Application materials, other than those created by the Department that will be utilized by an ESG Coordinator during a CoC Local Competition are subject to Department review prior to the Application acceptance period, and must not conflict with §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Applicants recommended to the Department by the ESG Coordinator after a CoC Local Competition must satisfy the general threshold criteria established in §7.36 of this subchapter (relating to General Threshold Criteria under a Department NOFA), and establish performance targets as required by §7.40 of this subchapter (relating to Program Participant Services Selection Criteria).

(c) The ESG Coordinator must submit Applications recommended for funding under the CoC Local Competition to the Department prior to award recommendations being made by the Department to its Board. The recommendations must utilize all funding available in the region, unless all eligible Applications received are funded, and there is a remaining balance in the region. An Applicant that applies in a Local Competition for funding is not eligible to be awarded funding in the TDHCA funding competition.

(d) Applications not recommended by the ESG Coordinator for funding must be retained by the ESG Coordinator for a minimum of five years in accordance with 24 CFR §576.500 and must be made available to the Department upon request.

§7.35. *Eligible Applicants.*

(a) An eligible Subrecipient is a Unit of Local Government as defined by HUD in CPD Notice 17-10, or a Private Nonprofit Organization.

(b) The Department reserves the option to limit eligible Subrecipient entities in a given NOFA.

§7.36. *General Threshold Criteria under a Department NOFA.*

(a) Applications submitted to the Department in response to a NOFA are subject to general threshold criteria. Applications which do not meet the general threshold criteria or which cannot resolve an administrative deficiency related to general threshold criteria are subject to termination. Applicants applying directly to the Department to administer the ESG Program must submit an Application on or before the deadlines specified in the NOFA, and must include items in paragraphs (1)-(13) of this subsection:

(1) Application materials as published by the Department including, but not limited to, program description, budget, and performance statement.

(2) An ESG budget that does not exceed the total amount available within the CoC region or other geographic limitation, as applicable.

(3) A copy of the Applicant's written standards that comply with the requirements of 24 CFR §576.400 and certification of compliance with these standards. Any occupancy standard set by the Subrecipient must not conflict with local regulations or Texas Property Code §92.010.

(4) A copy of the Applicant's policy for termination of assistance that complies with the requirements of 24 CFR §576.402 and certification of compliance with these standards.

(5) For a NOFA under the Allocation Formula, a Service Area which consists of at least the entirety of one county or multiple counties within the CoC region under which Application is made, unless a CoC region does not include an entire county. When the CoC region does not encompass at least the entirety of one county, the Service Area must encompass the entire CoC region. The Service Area selected within an Application must be fully contained within one CoC region.

(6) Commitment in the budget to the provision of 100% Match, or request for a Match waiver, as applicable. Match waivers will be considered by the Department based on the rank of the Application. Applicants requesting an award of funds in excess of \$50,000 are not eligible to request or receive a Match waiver. In the event that the Match waivers requested exceed \$100,000, the waivers will be considered only for the highest scoring eligible Applications, subject to availability of excess match provided by ESG Applicants. Applicants that do not receive the waiver and are unable to provide a source of Match funding will be ineligible for an ESG award.

(7) For a NOFA under the Allocation Formula, evidence from the CoC Lead Agency in the region that the Applicant consulted with the CoC in the preparation of their ESG application and that the CoC Lead Agency agrees that the Application meets CoC priorities for serving persons experiencing homelessness and/or persons At-risk of Homelessness.

(8) Applicant certification of compliance with State and federal laws, rules and guidance governing the ESG Program as provided in the Application.

(9) Evidence of Data Universal Numbering System (DUNS) number for Applicant.

(10) Documentation of existing Section 501(c) tax-exempt status, as applicable.

(11) Completed previous participation review materials, as outlined in 10 TAC Chapter 1, Subchapter C of this title (relating to Previous Participation) for Applicant.

(12) Local government approval per 24 CFR §576.202(a)(2) for Applicant that will be providing shelter activities with ESG or as ESG Match, as applicable. This documentation must be submitted no later than 30 calendar days after the Application submission deadline as specified in the NOFA. If the documentation is not received by the Department within 30 calendar days of the Application submission deadline, the emergency shelter funding components in the Application will be removed from consideration in the Application review; the amount requested will be reduced by the amount that had been designated for emergency shelter funding; any points requested for emergency shelter activities will be deducted from the self-score and final score; and performance for emergency shelter component will be removed from expected deliverables.

(13) A resolution or other governing body action from the Applicant's direct governing body which includes:

(A) Authorization of the submission of the Application;

(B) Title of the person authorized to represent the entity and who also has signature authority to execute a Contract; and

(C) Date that the resolution was passed by the governing body, which must be within 12 months preceding the date the Application is submitted.

(b) An Application must be substantially complete when received by the Department. An Application may be terminated if the Application is so unclear or incomplete that a thorough review cannot reasonably be performed, as determined by the Department. Such Application will be terminated without being processed as an administrative deficiency. Specific reasons for a Department termination will be included in the notification sent to the Applicant but, because the termination may occur prior to completion of the full review, will not necessarily include a comprehensive list of all deficiencies in the Application. Termination of an Application may be subject to §1.7 of this title, (relating to the Appeals Process).

§7.37. Application Review and Administrative Deficiency Process for Department NOFAs.

(a) The Department will accept Applications on an ongoing basis during the Application acceptance period as specified in the NOFA. Applications will be reviewed for threshold criteria and selection criteria, administrative deficiencies, and then ranked based upon the score of the Application as determined by the Department upon completion of the review.

(b) The administrative deficiency process allows the Applicant to provide additional information with regard to an Application after the Application acceptance period has ended, but only if it is requested in writing by Department staff. Staff may request that an Applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in the original Application or to assist staff in evaluating the Application. Staff will request such information via a deficiency notice. Staff will send the deficiency notice via email and responses must be in kind unless otherwise defined in the notice. A review of the Applicant's response may reveal that additional administrative deficiencies are exposed or that issues initially identified as an administrative deficiency are actually determined to be beyond the scope of an administrative deficiency process, meaning that they are in fact matters of a material nature not susceptible to be resolved. For example, a response to an administrative deficiency that causes a new

inconsistency which cannot be resolved without reversing or eliminating the need for the first deficiency response would be an example of an issue that is beyond the scope of an administrative deficiency. Department staff will make a good faith effort to provide an Applicant confirmation that an administrative deficiency response has been received and/or that such response is satisfactory. Communication from staff that the response was satisfactory does not establish any entitlement to points, eligibility status, or to any presumption of a final determination that the Applicant has fulfilled any other requirements as such is the sole determination of the Department's Board.

(c) An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, except in response to a direct written request from the Department to remedy an administrative deficiency or by amendment of an Application after the Board approval of an ESG award. An administrative deficiency may not be cured if it would, in the Department's determination, substantially change an Application including score, or if the Applicant provides any new unrequested information to cure the deficiency.

(d) The time period for responding to a deficiency notice commences on the first day following the deficiency notice date. If an administrative deficiency is not resolved to the satisfaction of the Department by 5:00 p.m. on the seventh calendar day following the date of the deficiency notice, then one point shall be deducted from the selection criteria score for each additional day the deficiency remains unresolved. If administrative deficiencies are not resolved by 5:00 p.m., Austin local time on the fourteenth calendar day following the date of the deficiency notice, then the Application shall be terminated.

§7.38. Award and Funding Process for Allocated Funds.

(a) An Applicant recommended to the Department by the ESG Coordinator after a Local Competition may be awarded funding, pending Previous Participation Review and Board approval. If the Applicant does not meet the requirements of the Previous Participation Review or the Board does not approve the recommendations of the ESG Coordinator, if there is another scheduled Board meeting before the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), the Department will provide the ESG Coordinator the option to revise the list of recommended Applicants and recommended award amounts in order to still recommend awards for the full amount of funding in the region. If there are any funds in a CoC region for which an ESG Coordinator administered the CoC Local Competition process that are not recommended for an award by the ESG Coordinator or not approved by the Board, and there are no other Applicants in the CoC region or the Department must commit funding in accordance with 24 CFR §576.203(a)(1)(i), these funds will be added into other resources as described in subsection (j) of this section.

(b) An Application may be submitted requesting funds for Program Participant services under street outreach, emergency shelter, homeless prevention, and/or rapid re-housing, per §7.33(d) of this subchapter (relating to Apportionment of ESG Funds). Each Application submission will include one uniform Application with information applicable across all Program Participant service types, and then information on each Program Participant service requested. Each Program Participant service reflected in an Application will be treated as a separate Application, assigned a separate Application number per service type, and will be scored and ranked separately for each service type selected. Applicants may be awarded funds for one or more Program Participant services in accordance with this section. Because each Program Participant service is reviewed separately and competes separately, an award of funds for provision of one Program Participant service does not affect an award of funds in any other Program Participant service reflected in that same Application submission.

(c) Applications submitted directly to the Department for consideration in CoC areas in which there is not an ESG Coordinator will receive points based on experience, program design, budget, previous performance, collaboration, and performance measures. Applications will be scored and ranked based on selection criteria described in this subchapter.

(d) Applicants will be required to submit a self-score within the Application. In no event will the points awarded to the Applicant exceed the point value of the self-score in any selection criterion.

(e) Tie breakers. Each Application submitted to the Department shall be assigned a number between one and the total number of applications. The number assignment will be determined in a random selection process to occur immediately following the close of the application acceptance period, and Applicants will be notified of said number assignment as soon as possible thereafter. The randomly assigned numbers will be used to resolve ties, with the highest assigned number having the highest priority.

(f) Partial awards. In order to maintain funding within the Allocation Formula amounts designated for each CoC region as determined in this subchapter, an Applicant may be offered a partial award of their requested funds. An Applicant offered a partial award of funds must confirm their acceptance of a partial award, and submit updated information related to the reduction within seven calendar days following the date of notification. Scoring criteria may be updated based on the reduced funding request, but any changes to the scoring criteria must allow the Application to maintain its rank.

(g) Funding will be recommended first for Applicants within the CoC region up to the Allocation Formula amount designated for the CoC region as determined in this subchapter.

(1) Eligible Applications will be ranked in descending order by score within the CoC region which the Application proposes to serve. Paragraph (e) of this section will be used to determine the priority of tied scores.

(2) ESG funds allocated to each CoC region will be awarded starting with the highest ranking Application and continue until the funds allocated for that CoC region are fully utilized, but not exceeded, or until the Applicant for the last application to be recommended in the region declines an offer of a partial award.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications in the region, however, a recommendation for a full award of an Application for street outreach or emergency shelter will not be made through the first level of funding if funding recommendations in the CoC region for street outreach and emergency shelter will exceed 60% of the funding available in the CoC region. Applications proposing street outreach and emergency shelter services but causing awards for such services in the region to exceed 60% of the available funding in the region, will be offered a partial award of up to the amount remaining to reach 60% for the region. If no funds remain available that would not exceed 60% at the regional level for a partial award, or if they decline such partial award, the Application will be passed over and recommendation of funding would proceed to the next highest scoring application(s) in the region in order to fully fund the Formula Allocation amount for the region. Applications that were passed over for funding may be eligible to compete in the second level of the award process described in subsection (h) of this section, if no more than 60% of funds have been awarded for street outreach and emergency shelter in the total allocated funds.

(4) A partial award may be offered to the last highest ranking Application which is otherwise eligible for funding within the CoC

region to ensure that the amount of funds recommended for a region does not initially exceed the amount identified in the Formula Allocation.

(A) The Applicant or Applicants that accept an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application ranking would not be affected. If a partial award or the Applicant's subsequent adjustments results in a reduced score that alters their scoring rank within the CoC region, the opportunity to be funded from the first level of funding recommendations will not be offered to the Application.

(B) The Applicant may decline the partial award of funds and instead request to be included for consideration in the second level of funding recommendations.

(h) The second level of recommendations is available only to Applications in CoC regions where the initially allocated funds were not fully awarded under the first level of recommendations. Remaining funds after the completion of the first level of funding will be collapsed from CoC regions which had insufficient eligible Applications to utilize the entire Allocation Formula amount. This collapse of funds will be made available to Applicants within each of the CoC regions that are determined to be underfunded based on total award recommendations within the CoC, and their respective Allocation Formula amount. Applications eligible for an award will be ranked first by the degree to which their CoC region was underfunded, and then by Application score.

(1) The Department will determine the degree to which a CoC region is underfunded by dividing the total funds recommended through the first level of funding recommendation by the amount of funds that were initially allocated to the CoC region according to the Allocation Formula. Regions where this percentage is greater than zero and less than 100 will be ranked in order, such that the lowest percentage funded is the highest degree underfunded and therefore has the highest priority. Subsection (e) of this section will be used to determine the outcome of tied scores. The highest ranking unfunded Applicant in the most underfunded region will be recommended for an award of full funding if sufficient funds remain available for funding or a partial award of funds if an insufficient statewide balance remains.

(2) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If 60% of the total allocated funding available has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended, and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(A) An Application which is otherwise eligible for funding within the second level, except that requested funds exceed the amount available for street outreach and emergency shelter, may be offered a partial award of funds. In no event shall the partial award cause the Department to award funds in excess of 60% of allocated funds for street outreach and emergency shelter.

(B) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Applications ranking would not be affected. If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters their scoring rank within this second level of funding recommendations, the opportunity to be funded

from this second level of recommendations will not be offered to this Applicant.

(3) As long as collapsed funds remain available, the process continues with the next highest ranked unfunded Application within the highest underfunded region receiving a recommendation for an award. When more than one CoC region is equally underfunded, the CoC region with the highest ranked unfunded Application will first be offered the funding. It is anticipated that only one Application will be funded per underserved CoC region during the second level of recommendations, but the process will continue until the earlier of all CoC regions with sufficient eligible Applicants are recommended for funding up to their Allocation Formula amount, or no collapsed funds remain. If an Applicant declines the final offer of a partial award, or is unable to maintain their rank within their region, then the next highest ranked unfunded Application in the region will have an option to receive the remaining funds. This offer will be made only one time per region in the second level of recommendations. If no other eligible Application exist, the next most underfunded regions highest application will be offered the funds. Any funds remaining after all underfunded regions have had the opportunity to be fully funded will be utilized in the third level of funding recommendations.

(i) If any funds remain after recommendations for all eligible Applications in the second level of recommendations is completed, such funds shall collapse and be made available statewide.

(1) All eligible Applications not recommended to be awarded under the first two levels of funding recommendations will be ranked in descending order of score with the highest scoring unfunded Application, regardless of region, having the highest priority rank. Subsection (e) of this section will be used to determine the outcome of tied scores.

(2) Funds will be awarded in this level of funding starting with the highest ranked Application and continuing until no funds remain available to award or until there are no eligible Applications left to be recommended for funding.

(3) Applications proposing street outreach or emergency shelter will be ranked alongside all Applications. If the 60% of the allocated funds has been awarded to Applications proposing street outreach and emergency shelter, Applications proposing these activities will not be recommended and will be passed over to fund Applications proposing homeless prevention or rapid re-housing.

(4) The final award in the third level of recommendations and the 60% capped street outreach and emergency shelter funding may be a partial award if an Application cannot be fully funded.

(A) An Applicant that accepts an offer of a partial award may be required to amend the Application if the reduction in funds is expected to impact scored items and to adjust performance deliverables based on the reduced amount of funding. The revised score based on the partial award must still ensure the Application's ranking would not be affected.

(B) The Applicant may decline a partial award of funds. Applicants that decline a partial award of funding within the statewide competition will be withdrawn from competition, as there are not sufficient remaining funds to award the Application.

(C) If a partial award or the Applicant's subsequent adjustments result in a reduced score that alters the scoring rank or an Applicant declines a partial award, the next highest ranked Application will be presented with the opportunity to be funded. This offer will be made only one time per region in the third level of recommendations.

(j) If there are still funds available after the third level of recommendations, the Department may offer and recommend award amounts in excess of the funds requested and in excess of the award amount limits identified in §7.33(c) of this subchapter (relating to Apportionment of ESG Funds), starting with the highest scoring Applications already identified to be recommended for an award, not to exceed an award more than 50% greater than their original request. The Department will provide notice of the proposed increase to the impacted Applicants. The budget and Performance targets would increase proportionally to the additional funding received. An Applicant will have the opportunity to accept or reject the recommendation for increased funding prior to final award by the Department.

(k) In the event that the Department elects to include a provision to award funds biennially, the distribution of funding for the second funding cycle is contingent upon the amount of the ESG allocation granted to the Department in the subsequent federal fiscal year. An ESG Subrecipient that does not satisfy the requirements of the Previous Participation Review or is not approved by the Department's Governing Board is ineligible for funding. An ESG Subrecipient may have the right to appeal funding decisions per 10 TAC §1.7 of this chapter (relating to the Appeals Process). When the total amount of ESG funding in the subsequent year is less than 100% of the first year's funding, awards will be reduced proportionally.

(1) When the total amount of ESG funding in the subsequent year's Allocation Formula is greater than 100% of the first year funding or if there are funds available from reduced awards, the additional funding will be used first to increase any partial awards to ESG Subrecipients that have met their first Expenditure benchmark. The funds will be divided by the number of ESG Subrecipients with partial awards who met the first Expenditure benchmark in year one. This amount or the amount needed to increase the partial awards up to the original Application request, whichever is less, will be offered to these Subrecipients. If this process results in one or more Subrecipients receiving funds adequate to fulfill the original Application request, the funds in excess of the full award amount will be offered again to the remaining Subrecipients with a partial award. This process will continue until all partial awards of these Subrecipients are funded up to the original Application request, or until funds are exhausted.

(2) Funds remaining after the partial award increase under paragraph (1) of this subsection will be awarded to ESG Subrecipients in proportion to the ESG allocation. The budget and Performance targets would be adjusted proportionally to the funding. If the subsequent year allocation (after subtracting the amounts allocated under paragraph (1) of this subsection) is equal to or less than 150% of the first year of allocation, ESG Subrecipients may be offered an award of funds not to exceed 150% of their first award of funding under the NOFA.

(3) Funds remaining after increasing ESG Subrecipients to 150% of their original award will be offered to fully or partially fund the next highest ranking Applications from the ESG competition for a 12-month period.

(l) The Department reserves the right to negotiate the final Contract amount and local Match with a Subrecipient.

§7.39. Uniform Selection Criteria.

An Application for funding allocated in accordance with §7.33(b) of this section (relating to Apportionment of ESG Funds) and made to the Department may be awarded points under the following uniform selection criteria. The total of the score under this part will be the uniform Application score. The uniform Application score will be comprised of points awarded under each of the following criteria:

(1) Homeless participation. An Application may receive a maximum of three points for the participation of persons who are Homeless in the Applicant's program design. Points may be earned under subparagraphs (A) and (B) of this paragraph for a total of up to three points.

(A) An Application may receive a maximum of two points when at least one person who is Homeless or formerly Homeless is a member of or consults with the Applicant's policy-making entity for facilities, services, or assistance under ESG; and

(B) An Application may receive a maximum of one point when at least one person who is Homeless or formerly Homeless assists in constructing, renovating, or maintaining the Applicant's ESG facilities.

(2) Organizational or management experience. An Application may receive a maximum of eight points for the Applicant's or its management's experience administering federal or State programs.

(A) An Application may receive a maximum of six points for Applicant's or its management staff with one to five years of experience; or

(B) An Application may receive a maximum of eight points for an Applicant or its management staff with six or more years of experience.

(3) Percentage of prior ESG awarded funds expended. An Application may receive a maximum of five points for the Applicant's past expenditure performance of ESG funds proportionate to the award of funds from TDHCA to the Applicant. This will apply to any and all ESG Contract(s) administered by the Applicant that were subject to the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established in the by the Department. Contract Expenditures will be averaged among all ESG Contracts that were closed within 12 months of the Application deadline, or met the second Expenditure benchmark without requiring an amendment if the Applicant was awarded multiple Contracts. The percentage of ESG funds expended will be calculated utilizing the amount of the Contract as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments, except where the Applicant voluntarily return funds in accordance with this subchapter. Expenditure will be defined as the Applicant having reported the funds as expended. Applications may receive:

(A) Three points if the Applicant expended 91-94% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments;

(B) Four points if the Applicant expended 95% to less than 100% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments; or

(C) Five points if the Applicant expended 100% of its prior ESG Contract funds as of its closing or the second Expenditure benchmark as stated in the Contract prior to amendments.

(4) Contract History on Reporting and percentage of Outcomes. An Applicant may receive a maximum of five points for its prior timeliness of reports and performance achieved for previously awarded ESG Contract(s) that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline established by the Department. Points may be requested under all of the subparagraphs (A) to (E) of this paragraph not to exceed a total of five points. The Outcome percentages will be averaged among all prior ESG Contracts that met the second Expenditure benchmark or closed within 12 months prior to the date of the Application deadline

to determine the final percentage amount for this scoring criterion. Applications may receive points as follows:

(A) One point if the Applicant submitted the last three reports on or before the Contract end date within the reports' respective reporting deadlines;

(B) One point if the Applicant met 100% or more of their street outreach target of persons exiting to temporary or transitional or permanent housing destination;

(C) One point if the Applicant met 100% or more of their emergency shelter exits to permanent housing;

(D) One point if the Applicant met 100% or more of their Homeless prevention target for maintaining housing for three months or more; and

(E) One point if the Applicant met 100% or more of their rapid re-housing target for maintaining housing for three months or more.

(5) Monitoring history. Applications may receive a maximum of five points for the Applicant's previous monitoring history. The Department will consider the monitoring history for three years before the date that Applications are first accepted under the NOFA when determining the points awarded under this criterion. Findings that were subsequently rescinded will not be considered Findings for the purposes of this scoring criterion. Applications may be limited to a maximum of:

(A) Five points if the Applicant has not received any monitoring Findings, including Applicants with no previous monitoring history;

(B) Not more than three points if the monitoring history has a close-out letter that included Findings, but the Findings were not related to Household eligibility or violations of procurement requirements;

(C) Not more than two points if the monitoring history has a close-out letter that included Findings related to Household eligibility;

(D) Not more than one point if the monitoring history has a monitoring close-out letter that included Findings related to violations of procurement requirements; or

(E) Zero points may be requested under this criterion if the Applicant received a Finding resulting in disallowed costs in excess of \$5,000 which required repayment to the Department.

(6) Priority for certain communities. Applications may receive two points if at least one Colonia, as defined in Tex. Gov't Code §2306.083, is included in the Service Area identified in the Application. Applicants awarded points under this criterion will be contractually required to maintain a Service Area that includes at least one Colonia as identified on the Office of Attorney General's website.

(7) Previously unserved areas. Applications may receive a maximum of 10 points for provision of ESG services if at least one county in the Service Area included in the Application has not received ESG funds from the Department or directly from HUD within the previous federal funding year for services. Applications may receive a maximum of:

(A) Five points if at least one county within the Service Area as stated in the Application did not receive an award of ESG funds from the Department within the previous federal funding year; or

(B) Ten points if no portion of the Service Area has received ESG funds within the previous federal funding year.

§7.40. *Program Participant Services Selection Criteria.*

(a) An Application for funding allocated under §7.33(b) of this subchapter (relating to Apportionment of ESG Funds), and made to the Department, may be awarded points for Program Participant services under each category. Points awarded for Program Participant services will be separately tabulated and added to the uniform Application score to determine a score for each of the Program Participant services Applications submitted. All scoring criteria that are based upon measurable future performance expectations will be measured and expected to be fulfilled by being included as a performance requirement in the Contract should the Application be awarded funds.

(b) Street outreach. An Application proposing street outreach may receive points under the following criteria:

(1) Street outreach CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for street outreach. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for street outreach.

(3) Street outreach serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing street outreach may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(4) Street outreach temporary/transitional/permanent housing. An Application may receive a maximum of five points based on the percentage of persons targeted to be served with street outreach who will be placed in temporary, transitional or permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25% of persons served with street outreach who will be placed in temporary housing;

(B) Three points based on a minimum target of 35% of persons served with street outreach who will be placed in temporary housing;

(C) Four points based on a minimum target of 45% of persons served with street outreach who will be placed in temporary housing; or

(D) Five points based on a minimum target of 55% of persons served with street outreach who will be placed in temporary housing.

(5) Street outreach services. An Application may receive a maximum of five points based on the number of street outreach services provided through ESG or other funds including engagement, case management, emergency health services, emergency mental health services, and transportation services. Emergency health services and emergency mental services may only be provided by ESG funds if these services are inaccessible or unavailable within the area. An Application may receive a maximum of:

(A) Two points if the Applicant provides street outreach engagement and case management;

(B) Three points if the Applicant provides street outreach engagement and case management, and one other service;

(C) Four points if the Applicant provides street outreach engagement and case management, and two other services; or

(D) Five points if the Applicant provides street outreach engagement and case management, and three other services.

(6) Experience providing street outreach. An Application may receive a maximum of 10 points based on the Applicant's experience providing street outreach services.

(A) Two points if the Applicant has provided street outreach for up to two years;

(B) Four points if the Applicant has provided street outreach for up to four years;

(C) Six points if the Applicant has provided street outreach for up to six years;

(D) Eight points if the Applicant has provided street outreach for up to eight years; or

(E) Ten points if the Applicant has provided street outreach for 10 or more years.

(c) Emergency shelter. An Application proposing emergency shelter may receive points under the following criteria:

(1) Emergency shelter CoC collaboration. Applications may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for emergency shelter. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for emergency shelter.

(3) Emergency Shelter serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing emergency shelter may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(4) Emergency shelter permanent housing. An Applicant may receive a maximum of five points based on the percentage of persons served with emergency shelter targeted to be placed in permanent housing. An Application may receive a maximum of:

(A) Two points based on a minimum target of 25% of persons served with emergency shelter who will be placed in permanent housing;

(B) Three points based on a minimum target of 35% of persons served with emergency shelter who will be placed in permanent housing;

(C) Four points based on a minimum target of 45% of persons served with emergency shelter who will be placed in permanent housing; or

(D) Five points based on a minimum target of 55% of persons served with emergency shelter who will be placed in permanent housing.

(5) Emergency shelter services. An Applicant may receive a maximum of five points based on the number of emergency shelter services provided through ESG or other funds, as listed in 24 CFR §576.102. Emergency shelter services include case management, child care, education services, employment assistance and job training, outpatient health services, legal services, life skills training, outpatient mental health services, outpatient substance abuse treatment services, and transportation. Outpatient health services, mental services, and substance abuse treatment services should only be provided by ESG funds if these services are otherwise inaccessible or unavailable within the Service Area. This selection criterion will become a contractual requirement if the Applicant is awarded a Contract. An Application may receive a maximum of:

(A) Two points if the Applicant provides case management and two of the other services;

(B) Three points if the Applicant provides case management and three of the other services;

(C) Four points if the Applicant provides case management and four of the other services; or

(D) Five points if the Applicant provides case management and five of the other services.

(6) Experience providing emergency shelter. An Application may receive a maximum of 10 points based on the Applicant's experience providing emergency shelter services.

(A) Two points if the Applicant has provided emergency shelter for up to two years;

(B) Four points if the Applicant has provided emergency shelter for up to four years;

(C) Six points if the Applicant has provided emergency shelter for up to six years;

(D) Eight points if the Applicant has provided emergency shelter for up to eight years; or

(E) Ten points if the Applicant has provided emergency shelter for 10 or more years.

(d) Homeless prevention. An Application proposing homeless prevention may receive points under the following criteria:

(1) Homeless prevention CoC collaboration. An Application may receive a maximum of 10 points for support from the CoC under which the Application is submitted. An Application may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for homeless prevention. An Application may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for homelessness prevention.

(3) Homelessness prevention serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in §7.2(b)(34) of this chapter (relating to Definitions). An Applicant providing homelessness prevention may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who have one or more special needs;

(B) Two points based on a minimum target of 80% of persons served who have one or more special needs;

(C) Three points based on a minimum target of 90% of persons served who have one or more special needs;

(D) Four points based on a minimum target of 95% of persons served who have one or more special needs; or

(E) Five points based on a minimum target of 100% of persons served who have one or more special needs.

(4) Homeless prevention maintaining housing. An Application may receive a maximum of five points based on the percentage of persons served with Homelessness prevention who are targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) Two points based on a minimum target of 40% of persons served with homelessness prevention maintaining housing for three months;

(B) Three points based on a minimum target of 50% of persons served with homelessness prevention maintaining housing for three months;

(C) Four points based on a minimum target of 60% of persons served with homelessness prevention maintaining housing for three months; or

(D) Five points based on a minimum target of 70% of persons served with homelessness prevention maintaining housing for three months.

(5) Homeless prevention services and rental assistance. An Application may receive a maximum of five points based on the number of homeless prevention services and type of rental assistance provided

through ESG or other funds. Homeless prevention services and rental assistance include rental application fees, security deposits and last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, and medium-term rental assistance. An Application may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other services or rental assistance;

(C) Four points if the Applicant provides housing stability case management and five of the other services or rental assistance; or

(D) Five points if the Applicant provides housing stability case management and six of the other services or rental assistance.

(6) Experience providing homeless prevention or rental assistance services. An Application may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided homeless prevention or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided homeless prevention or tenant-based rental assistance services for 10 or more years.

(e) Rapid re-housing. An Application proposing rapid re-housing may receive points under the following criteria:

(1) Rapid re-housing CoC collaboration. An Application may receive up to 10 points for support from the CoC under which the Application is submitted. Applications may receive a maximum of:

(A) Three points based on an "approved" rating from the CoC;

(B) Seven points based on "recommended" rating from the CoC; and

(C) Ten points based on a "strongly recommended" rating from the CoC.

(2) Matching funds for rapid re-housing. Applications may receive a maximum of three points if the Applicant commits Matching funds equal to or greater than 110% of the total ESG funds requested for rapid re-housing.

(3) Rapid re-housing serving Homeless Subpopulations. An Application may receive a maximum of five points by proposing to serve persons who are in a Homeless Subpopulation, as defined in 10 TAC §7.2(b)(34) (relating to Definitions). Applicants providing rapid re-housing may receive a maximum of:

(A) One point based on a minimum target of 70% of persons served who are in one or more Homeless Subpopulation;

(B) Two points based on a minimum target of 80% of persons served who are in one or more Homeless Subpopulation;

(C) Three points based on a minimum target of 90% of persons served who are in one or more Homeless Subpopulation;

(D) Four points based on a minimum target of 95% of persons served who are in one or more Homeless Subpopulation; or

(E) Five points based on a minimum target of 100% of persons served who are in one or more Homeless Subpopulation.

(4) Rapid re-housing maintaining housing. Applicants may receive a maximum of five points based on the percentage of persons served with rapid re-housing targeted to maintain their housing for three months or more after program exit. Applications may receive a maximum of:

(A) Two points based on a minimum target of 40% of persons served with rapid re-housing maintaining housing for three months;

(B) Three points based on a minimum target of 50% of persons served with rapid re-housing maintaining housing for three months;

(C) Four points based on a minimum target of 60% of persons served with rapid re-housing maintaining housing for three months; or

(D) Five points based on a minimum target of 70% of persons served with rapid re-housing maintaining housing for three months.

(5) Rapid re-housing services and rental assistance. Applicants may receive a maximum of five points based on the number of rapid re-housing services and type of rental assistance provided through ESG or other funds. Rapid re-housing services and rental assistance include rental application fees, security deposits/last month's rent, utility payments/deposits, moving costs, housing search and placement, housing stability case management, mediation, legal services, credit repair, short-term rental assistance, medium-term rental assistance. Applications may receive a maximum of:

(A) Two points if the Applicant provides housing stability case management and three of the other services or rental assistance;

(B) Three points if the Applicant provides housing stability case management and four of the other components;

(C) Four points if the Applicant provides housing stability case management and five of the other components; or

(D) Five points if the Applicant provides housing stability case management and six of the other components.

(6) Experience providing rapid re-housing or tenant-based rental assistance services. Applications may receive a maximum of 10 points based on the Applicant's experience providing homeless prevention or tenant-based rental assistance services.

(A) Two points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to two years;

(B) Four points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to four years;

(C) Six points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to six years;

(D) Eight points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for up to eight years; or

(E) Ten points if the Applicant has provided rapid re-housing or tenant-based rental assistance services for 10 or more years.

§7.41. Contract Term, Expenditure Benchmarks, and Return of Funds.

(a) The Contract Term for allocated funds may not exceed 12 months under a one-year funding cycle. The initial Contract Term for allocated funds and may not exceed 12 months under a two-year funding cycle, but may be amended to include an additional 12 months if allocated funds are awarded to the Applicant in the second year of the funding cycle. The Contract Term for a two-year funding cycle shall not exceed 24 months, as amended, unless an extension has been granted in accordance with this section.

(b) Expenditure benchmarks are ineligible for extension, except that an extension may be granted for expenditure benchmark two or four. A request to extend an expenditure benchmark must support that the extension is necessary to provide services required under the Contract, must evidence good cause for failure to meet the benchmark, and is subject to approval by the Department.

(1) The Division Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that do not exceed one month.

(2) The Executive Director or his or her designee may approve an extension to the Contract Term or Expenditure benchmark two or four that does not exceed three months.

(3) If the Subrecipient requests to extend the Contract Term or Expenditure benchmark for more than three months, but less than six months, Board approval is required. Extensions for greater than six months may not be granted.

(4) Extensions will be considered on a cumulative basis.

(c) Expenditure benchmarks for 12 or 24 month Contracts are listed in paragraphs (1) - (4) of this paragraph, unless otherwise stated in the Contract as amended. For Contracts with a 12-month term, the third and fourth Expenditure benchmarks do not apply.

(1) Expenditure benchmark one: Subrecipient is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 50% of the Contracted funds by month nine of the original Contract Term. A Subrecipient that has not met the first Expenditure benchmark must submit a plan to the Department evidencing the ability of the Subrecipient to expend the remaining funds by month 12 of the original Contract Term.

(2) Expenditure benchmark two: A Subrecipient is required to have reported expenditures in its first 12 Monthly Expenditure Reports reflecting at least 100% of the Contracted funds. A Subrecipient that has not met the second Expenditure benchmark, or that has not timely submitted Monthly Expenditure Reports, is subject to deobligation of funds.

(3) Expenditure benchmark three: A Subrecipient awarded funds in the second year of a two-year funding cycle is required to have reported expenditures in its Monthly Expenditure Reports reflecting at least 75% of the Contracted funds by month 21 of the amended Contract. Subrecipients that have not met the third Expenditure bench-

mark evidencing the ability of the Subrecipient to expend the remaining funds by end of the amended Contract Term.

(4) Expenditure benchmark four: Subrecipients awarded funds in the second year of a two-year funding cycle are required to have reported expenditures in its last Monthly Expenditure Report reflecting at least 100% of the Contracted funds expended. Funds remaining after the deadline for submission of the last Monthly Expenditure Report are subject to deobligation of funds.

(d) Funds remaining at the end of Contract's close out period will be automatically deobligated. Deobligation of funds may affect future funding recommendations.

(e) Prior to the Expenditure benchmarks two and four, as applicable, a Subrecipient may submit a written request to voluntarily return some or all of its funds to the Department, if the Subrecipient expects it will not fully expend and wishes to avoid deobligation or a reduced second funding cycle if awarded during a two-year cycle. Voluntary return of funds prior to the Expenditure benchmark will not impact future funding recommendations.

(f) The Department may request information regarding the performance or status of a Contract prior to a Contract benchmark, or at various times during the term of a Contract. Subrecipient must respond within the time limit stated in the request. Prolonged or repeated failure to respond may result in suspension of funds, default of the Contract, and ultimately in termination of the Contract by the Department.

(g) If additional funds become available through deobligated amounts from an award made under the allocation formula or program income generated from an award made under the allocation formula, the funds will be offered to the ESG Subrecipients with active contracts with the highest expenditure rate, as of the most recent Monthly Expenditure Report. These funds will be offered first to the ESG Subrecipients within the CoC region from which the additional funds became available, and then available statewide. The funds may increase the Contract of an ESG Subrecipient one time by up to 25% of the original Contract amount. Upon Board Approval, the Department may elect to reallocate retained funds by this method.

§7.42. General Administrative Requirements.

(a) Subrecipient must have written policies and procedures to ensure that sufficient records are established and maintained to enable a determination that ESG requirements are met. The written standards must be applied consistently for all Program Participants. Written policies must include, but not be limited to Inclusive Marketing outlined in §7.10 of this chapter.

(b) Subrecipient must obtain the correct level of environmental clearance prior to expenditure of ESG funds. Activities for which the Subrecipient does not properly complete the Department's environmental review process are ineligible, and funds will not be reimbursed or will be required to be repaid.

(c) Subrecipient is prohibited from charging occupancy fees for emergency shelter supported by funds covered by this subchapter.

(d) If a Private Nonprofit Organization ESG Subrecipient wishes to expand the geographic scope of its emergency shelter activities after Contract execution, an updated certification of approval from the Unit of General Purpose Local Government with jurisdiction over the updated Service Area must be submitted to the Department before funds are spent on emergency shelter in those areas.

(e) Subrecipient must document compliance with the shelter and housing standards per 24 CFR §576.500(j) and (k), including but

not limited to, maintaining sufficient construction and shelter inspection reports.

(f) Rental developments must comply with all construction or operational requirements governing the development or program to which ESG funds are comingled, and must comply with local health and safety codes.

(g) Subrecipient may be required to complete Contract orientation training prior to submission of the first Monthly Expenditure Report. Subrecipient must also complete training as requested by the Department in response to Findings or other issues identified while managing the Contract.

(h) Subrecipient must report on all measures in the Monthly Performance Report for demographics and Program Participant Services for which they are awarded.

(i) Subrecipient must develop and establish written procurement procedures that comply with federal, State, and local procurement requirements. A conflict of interest related to procurement is prohibited by 2 CFR §200.317-318 or Chapter 171 of the Local Government Code, as applicable.

(j) In instances where a potential conflict of interest exists related to a beneficiary of ESG assistance, Subrecipient must submit a request to the Department to grant an exception to any conflicts prohibited using the procedures at 24 CFR §576.404. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict, a description of how the public disclosure was made, and an attorney's opinion that the conflict does not violate State or local law. No ESG funds will be committed to assist a Household until HUD has granted an exception.

(k) Subrecipient will comply with the requirements under 24 CFR §576.409, "Protection for victims of domestic violence, dating violence, sexual assault, or stalking."

(1) Compliance with 24 CFR §576.409 includes, but is not limited to, providing two Departmental forms called "Notice of Occupancy Rights under the Violence Against Women Act" based on HUD form 5380 and "Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking," HUD form 5382, to each of the following:

(A) All applicants for short- and medium-term rental assistance at the time of admittance or denial;

(B) Program Participants of short- and medium-term rental assistance prior to execution of a Rental Assistance Agreement;

(C) Program Participants of short- and medium-term rental assistance with any notification of eviction or notification of termination of assistance; and

(D) Program Participants of short- and medium-term rental assistance either during an annual recertification or lease renewal process, whichever is applicable.

(2) Subrecipient will adopt and follow an Emergency Transfer Plan based on HUD's model Emergency Transfer Plan by no later than June 14, 2017, pursuant to 24 CFR §5.2005(e). Within three calendar days after Program Participants request transfers, Subrecipients will inform Program Participants of their eligibility under their Emergency Transfer Plan and keep records of all outcomes.

§7.43. Program Income.

(a) Program income is gross income received by the Subrecipient or its Affiliates directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period.

(b) Program income received and expended during the Contract Term will count toward meeting the Subrecipient's Matching requirements, per 24 CFR §576.201(f), provided the costs are eligible ESG costs that supplement the ESG program.

(c) Security and utility deposits paid on behalf of a Program Participant should be treated as a grant to the Program Participant. The deposit must remain with the Program Participant, and if returned, is to be returned only to the Program Participant. If the deposit is returned to the Subrecipient, it is program income, and must be treated as described in this subsection.

(d) In accounting for program income, the Subrecipient must accurately reflect the receipt of such funds separate from the receipt of federal funds and Subrecipient funds.

(e) Program income that is received after the end of the Contract Term, or not expended within the Contract Term, along with program income received two years following the end of the Contract Term must be returned to the Department within 10 calendar days of receipt. Income directly generated by a grant-supported activity after the two year period is no longer program income and may be retained by the Subrecipient.

§7.44. Program Participant Eligibility and Program Participant Files.

(a) Program participants must meet the applicable definitions of Homeless or At-risk of Homelessness. Proof of the eligibility or ineligibility for Program Participants must be maintained in accordance with 24 CFR §576.500, Recordkeeping and reporting requirements.

(1) The Applicant must keep income documentation for Program Participants receiving homelessness prevention or being re-certified for rapid re-housing. The Department offers Income Certification and Income Screening Tool forms, which may be used by the Applicant.

(2) The Department's Declaration of Income Statement (DIS) form must be utilized if income cannot be documented for Program Participants receiving homelessness prevention or being recertified for rapid re-housing. The DIS must be completed and signed by Program Participants for activities that have an income requirement. The DIS is not subject to provisions in HUD Handbook 4350.

(b) The Subrecipient must document eligibility before providing services after a break-in-service. A break-in-service occurs when a previously assisted Household has exited the program and is no longer receiving services through Homeless Programs. Upon reentry into ESG, the Household is required to complete a new intake application and provide updated source documentation, if applicable.

(c) The ESG Subrecipient must utilize the rental assistance agreement promulgated by the Department if providing rental assistance. The rental assistance agreement does not take the place of the lease agreement between the landlord/property manager and the tenant.

(d) The Subrecipient must retain a copy of the signed Disclosure Information on Lead Based Paint and/or Lead-Based Hazards for housing built before 1978 in the Program Participant's file in accordance with 24 CFR §576.403(a).

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

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David Cervantes
Acting Director
Texas Department of Housing and Community Affairs
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Proposal publication date: November 23, 2018
For further information, please call: (512) 475-3975



10 TAC §§7.2001 - 7.2007

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter C, §§7.2001 - 7.2007, Emergency Solutions Grants (ESG), as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7633). The repealed sections will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes has determined that for the first five years the repeal will be in effect, the repeal does not create or eliminate a government program but relates to the repeal, and simultaneous re-adoption makes changes to an existing activity, in the administration of the Emergency Solutions Grant (ESG) Program.

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

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

4. The repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by new rules simultaneously to provide for revisions.

6. The action will repeal an existing regulation, and is associated with a simultaneous re-adoption makes changes to an existing activity, in the administration of the Emergency Solutions Grant (ESG) Program.

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

8. The repeal will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate

nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal will be in effect, there will be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be to eliminate outdated rules while adopting new updated rules under separate action. There will not be economic costs to individuals required to comply with the repealed sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and January 2, 2019. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on February 21, 2019.

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

Except as described herein the repealed sections affect no other code, article, or statute.

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

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David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-3975



CHAPTER 23. SINGLE FAMILY HOME PROGRAM

SUBCHAPTER B. AVAILABILITY OF FUNDS, APPLICATION REQUIREMENTS, REVIEW AND AWARD PROCEDURES, GENERAL

ADMINISTRATIVE REQUIREMENTS, AND RESALE AND RECAPTURE OF FUNDS

10 TAC §23.24

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.24, Administrative Deficiency Process, to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7634). The amendments are adopted without changes and will not be republished.

The purpose of the adopted amended section is to update the rule to allow the submission of a corrected Resolution after the application review deficiency deadline for all HOME applications to prevent termination of the application. The current HOME Rules state that administrative deficiencies of a HOME application that are not resolved to the Department's satisfaction by the deficiency cure period substantiate termination of the application. The proposed amendments to §23.24 allow a corrected Resolution in response to a deficiency to be submitted to the Department without penalty and avoid the termination of an application because of a minor clerical error that applicants may not resolve before the application deficiency deadline.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it has been determined that no costs are associated with this amendment, and therefore no costs warrant being offset.

The Department has analyzed this adopted rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. David Cervantes, Acting Director, has determined that for the first five years the adopted amendments are in effect, the adopted rulemaking does not create or eliminate a government program, but relates to the amending of this rule which makes changes to one narrow aspect of an existing activity, the acceptance of resolutions as it relates to the administration of the HOME Program.

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

3. The adopted amended rule does not require additional future legislative appropriations.

4. The adopted amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The adopted amended rule is not creating a new regulation.

6. The adopted amended rule will not expand, limit, or repeal an existing regulation, but merely clarifies an acceptable timeframe for receiving a corrected resolution from a subrecipient.

7. The adopted amended rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The adopted amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this adopted amended rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The adopted rule amendments do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the amended rule as to its possible effects on local economies and has determined that for the first five years the amended rule will be in effect, the adopted amendments have no economic effect on local employment because this rule only applies to the administrative process of application review; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be an updated and more flexible rule. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendments are in effect, enforcing or administering the amendments does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to a deficiency process already in place for applicants pursuing HOME funding.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, and December 26, 2018. Comments regarding the proposed amendments were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the amendments on February 21, 2019.

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

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

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

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SUBCHAPTER E. CONTRACT FOR DEED PROGRAM

10 TAC §23.51

The Texas Department of Housing and Community Affairs (the Department) adopts the amendments to 10 TAC Chapter 23 Single Family HOME Program; Subchapter E, Contract for Deed Program, §23.51, Contract for Deed (CFD) General Requirements with changes to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7635). The purpose of amending this rule is to expand the funding of CFD activities statewide, and to increase the AMFI for eligible households from 60% to 80%. Currently, the CFD Program is restricted to areas that meet the definition of a colonia as defined in Tex. Gov't Code, Chapter 2306. Newer, very large subdivisions that share characteristics of a colonia, but do not meet the Chapter 2306 definition would benefit from CFD funding but are unable to be funded under the current rule. Proposed amendments to §23.51 would continue to limit CFD funding to areas that meet the definition of a colonia, but only for a period of time; the CFD funds would then be made available in non-colonia areas. Because funds are currently not fully utilized, it is hoped that by expanding the AMFI, more households in a contract for deed will be eligible to participate.

Tex. Gov't Code §2001.0045(b) does not apply to the rule adopted for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Cervantes has determined that, for the first five years the amended rule will be in effect:

1. The adopted amended rule does not create or eliminate a government program, but relates to amending this rule which makes narrow changes to adjust the eligibility within an existing activity, the Contract for Deed activity within the HOME Program.
2. The adopted amended rule does not require a change in work that would require the creation of new employee positions, nor are the amendment changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The adopted amended rule changes do not require additional future legislative appropriations.
4. The adopted amended rule does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.
5. The adopted amended rule is not creating a new regulation.
6. The adopted amended rule will not expand, limit, or repeal an existing regulation.

7. The adopted amended rule will not increase or decrease the number of individuals subject to the rule's applicability.

8. The adopted amended rule will not negatively nor positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department has evaluated this adopted amended rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The amended rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the adopted amended rule as to its possible effects on local economies and has determined that for the first five years the amended rule will be in effect the adopted amended rule may provide a possible positive economic effect on local employment. This amendment provides the possibility that program applicants not currently accessing these funds may do so, which could infuse funds into the local financial market. However because location of where program funds or development are directed is not determined in rule, that impact is not able to be quantified for any given community.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. David Cervantes, Acting Director, has determined that, for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of the amended section will be to allow CFD funds to be used in Contract for Deed situations that occur outside of a colonia and to assist households up to 80% AMFI. There will not be any economic cost to any individuals required to comply with the amended section because the processes described by the rule have already been in place.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Cervantes also has determined that for each year of the first five years the amendment is in effect, enforcing or administering the amendment does not have any foreseeable implications related to costs or revenues of the state or local governments because this rule only applies to expanded opportunities for eligibility to apply for funding.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between November 23, 2018, to December 26, 2018. Comments regarding the proposed amended section were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the amended rule on February 21, 2019.

STATUTORY AUTHORITY. The amended section is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the proposed amended section affects no other code, article, or statute.

§23.51. *Contract for Deed (CFD) General Requirements.*

(a) Program funds may be used for the following under this subchapter:

(1) Acquisition or acquisition and Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance; or

(2) Refinance with Rehabilitation, Reconstruction, or New Construction of single family housing units occupied by the purchaser as shown on an executory contract for conveyance provided construction costs exceed the amount of debt that is to be refinanced;

(b) An MHU is not an eligible property type for Rehabilitation. MHUs must be installed according to the manufacturer's installation instructions and in accordance with Federal and State laws and regulations.

(c) The Household's income must not exceed 80% (AMFI) and the Household must complete a homebuyer counseling program/class.

(d) The Department shall limit the availability of funds for CFD for a minimum of 60 calendar days for Activities proposing to serve Households whose income does not exceed 60% AMFI, and for properties located in a Colonia as defined in Tex. Gov't Code §2306.083.

(e) The Department will require a first lien position.

(f) Direct Activity Costs, exclusive of Match funds, are limited to:

(1) Refinance, acquisition and closing costs: \$35,000. In the case of a contract for deed housing unit that involves the refinance or acquisition of a loan on an existing MHU and/or the loan for the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed \$40,000 of assistance;

(2) Reconstruction and New Construction of site-built housing: the lesser of \$90 per square foot of conditioned space or \$100,000, or for Households of five or more Persons the lesser of \$90 per square foot of conditioned space or \$110,000 for a four-bedroom unit.

(3) Replacement with an energy efficient MHU: \$75,000; and

(4) Rehabilitation that is not Reconstruction: \$60,000, or up to \$100,000 for properties listed in or identified as eligible for listing in the National Register of Historic Places.

(g) In addition to the Direct Activity Costs allowable under subsection (d) of this section, a sum not to exceed \$10,000 may be used to pay for any of the following:

(1) Necessary environmental mitigation as identified during the Environmental review process;

(2) Installation of an aerobic septic system; or

(3) Homeowner requests for accessibility features.

(h) Activity soft costs eligible for reimbursement for Activities of the following types are limited to:

(1) Acquisition and closing costs: no more than \$1,500 per housing unit;

(2) Reconstruction or New Construction: no more than \$10,000 per housing unit;

(3) Replacement with an MHU: no more than \$3,500 per housing unit;

(4) Rehabilitation that is not Reconstruction: \$7,000 per housing unit. This limit may be exceeded for lead-based remediation

and only upon prior approval of the Division Director. The costs of testing and assessments for lead-based paint are not eligible Activity soft costs for housing units that are reconstructed or if the existing housing unit was built after December 31, 1977.

(i) Funds for administrative costs are limited to no more than 4% of the Direct Activity Costs, exclusive of Match funds.

(j) The assistance to an eligible Household shall be in the form of a loan in the amount of the Direct Activity Costs excluding Match funds. The loan will be at zero percent interest and include deferral of payment and annual pro rata forgiveness with a term based on the federal affordability requirements as defined in 24 CFR §92.254. For refinancing activities, the minimum loan term and affordability period is 15 years, regardless of the amount of HOME assistance.

(k) To ensure affordability, the Department will impose resale and recapture provisions established in this Chapter.

(l) For Reconstruction and New Construction, site-built housing units must meet or exceed the 2000 International Residential Code and all applicable local codes, standards, ordinances, and zoning requirements. In addition, Reconstruction and New Construction housing is required to meet 24 CFR §92.251(a)(2) as applicable. Housing that is Rehabilitated under this chapter must meet the Texas Minimum Construction Standards (TMCS) and all other applicable local codes, Rehabilitation standards, ordinances, and zoning ordinances in accordance with the HOME Final Rule. Housing units that are provided assistance for acquisition only must meet all applicable state and local housing quality standards and code requirements. In the absence of such standards and requirements, the housing units must meet the Housing Quality Standards (HQS) in 24 CFR §982.401.

(m) Each unit must meet the design and quality requirements described in paragraphs (1) - (4) of this subsection:

(1) Include the following amenities: Wired with RG-6 COAX or better and CAT3 phone cable or better to each bedroom and living room; Blinds or window coverings for all windows; Oven/Range; Exhaust/vent fans (vented to the outside) in bathrooms; Energy-Star or equivalently rated lighting in all rooms, which may include compact florescent bulbs. The living room and each bedroom must contain at least one ceiling lighting fixture and wiring must be capable of supporting ceiling fans;

(2) Contain no less than two bedrooms. Each unit must contain complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation;

(3) Each bedroom must be no less than 100 square feet; have a length or width no less than eight feet; be self contained with a door; have at least one window that provides exterior access; and have at least one closet that is not less than two feet deep and three feet wide and high enough to contain at least five feet of hanging space; and

(4) Be no less than 800 total net square feet for a two bedroom home; no less than 1,000 total net square feet for a three bedroom and two bathroom home; and no less than 1,200 total net square feet for a four bedroom and two bathroom home.

(n) Housing proposed to be constructed under this subchapter must meet the requirements of Chapters 20 and 21 of this title (relating to Single Family Programs Umbrella Rule and Minimum Energy Efficiency Requirements for Single Family Construction Activities, respectively) and must be certified by a licensed architect or engineer.

(1) The Department will reimburse only for the first time a set of architectural plans are used, unless any subsequent site specific fees are paid to a Third Party architect, or a licensed engineer; and

(2) A NOFA may include incentives or otherwise require architectural plans to incorporate "green building" elements.

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

Filed with the Office of the Secretary of State on March 5, 2019.

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David Cervantes

Acting Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-0908



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 7. LOCAL RECORDS

13 TAC §7.125

(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 figures in 13 TAC §7.125 are not included in the print version of the Texas Register. The figures are available in the on-line version of the March 22, 2019, issue of the Texas Register.)

The Texas State Library and Archives Commission (Commission) adopts amendments to 13 TAC §7.125. Amendments to 13 TAC §7.125(a)(3), local government retention schedule CC (Records of County Clerks), 13 TAC §7.125(a)(4), local government retention schedule DC (Records of District Clerks), 13 TAC §7.125(a)(5), local government retention schedule PS (Records of Public Safety Agencies), and 13 TAC §7.125(a)(8), local government retention schedule LC (Records of Justice and Municipal Courts), are adopted with changes to the proposed text as published in the December 14, 2018, issue of the *Texas Register* (43 TexReg 7995). The rule will be republished.

REASONED JUSTIFICATION. The Commission finds that the adoption of these amendments is necessary to keep the schedules up-to-date with current laws and administrative rules, and to improve the retention of public records.

SUMMARY OF PUBLIC COMMENTS AND STAFF RECOMMENDATIONS: Public comments were accepted through January 14, 2019. Comments were received regarding the amendments during the comment period from (1) City of Austin, Office of City Clerk (2) City of Fort Worth, (3) City of Austin, Police Department, and (3) Denton County. If a comment resulted in changes, as presented to the Commission at its meeting on February 8, 2019, such changes are indicated.

Comment: City of Austin, Office of the City Clerk, suggested to combine PS4125-04a and PS4125-04e because they have the same retention period.

Response: The Commission declines to combine the subseries because the retention period for PS4125-04e is prescribed by statute and for PS4125-04a is prescribed by TSLAC. Because

different statutes and rules apply to each subseries, it is recommended not to combine.

Comment: City of Austin, Office of the City Clerk, suggested to combine PS4125-04b and PS4125-04f because they have the same retention period.

Response: The Commission declines to combine the subseries because the retention period for PS4125-04f is prescribed by statute and for PS4125-04b is prescribed by TSLAC. Because different statutes and rules apply to each subseries, it is recommended not to combine.

Comment: City of Austin, Police Department, commented on PS4225-05. The Commenter states that the series does not contain audio/video recordings of encounters with a juvenile in which they are either cited and released or arrested. In both instances, they would be referred to the juvenile court system. Commenter requests either a subseries for these recordings or the description of PS4225-06 be revised to explicitly include them.

Response: The Commission clarifies that audio and video recordings in which the juvenile is cited and released or arrested are "other records relating to the investigation of an alleged offense" described by PS4225-06. Commission agrees to revise Records Description to improve clarity.

Comment: City of Fort Worth commented on PS4225-05a. Commenter recommends a different wording for the retention period to make it clearer and more user friendly.

Response: The Commission agrees to revise wording for PS4225-05a, in addition to similar records series in other schedules, CC1700-05a, DC2100-05a, and LC2450-01.

Comment: City of Fort Worth commented on PS4225-06. Commenter suggests Using "Juvenile Case Files" as the Record Title of all subseries is redundant and confusing.

Response: The Commission uses the same Record Title for all subseries. Users should refer to the Record Description to determine which subseries is appropriate.

Comment: City of Fort Worth commented on PS4225-06b. Commenter noted that the Retention Note directs to withdrawn series PS4225-13.

Response: The Commission corrected the Retention Note error to direct to the correct records series, PS4225-06d.

Comment: City of Fort Worth commented on PS4225-06d. Commenter noted that the numbering of this series appears inconsistent. Items within this subseries should be assigned a Record Number for clarity.

Response: The Commission disagrees with comment. Assigning Record Numbers to items within this subseries will not improve clarity. The subseries describes different outcomes for the juvenile subject of the file: informal discipline; first offender program; no referral / no probable cause; and referred to juvenile court. This numbering comports with the Commission's style on other local schedules. Commission revised Record description to improve clarity.

Comment: City of Fort Worth commented on PS4225-07a. Commenter noted typo in Record Description.

Response: The Commission corrected the typo and corrected similar records series in another schedule, DC2100-06.

Comment: City of Fort Worth commented on PS4225-14. Commenter noted that the numbering of this series appears incon-

sistent. Items within this subseries should be assigned a Record Number for clarity.

Response: The Commission disagrees with comment. Assigning Record Numbers to items within this subseries will not improve clarity. The subseries describes different purposes for taking juvenile fingerprints and photographs. This numbering compares with the Commission's style on other local schedules.

Comment: City of Austin, Office of City Clerk commented on PS4225-15. Commenter suggests a predictable retention period because law enforcement agencies are not aware of TJJD monitoring event and it is often difficult to get this information from TJJD.

Response: The Commission states that Government Code 441.158(b) restricts the Commission to listing the retention period prescribed by regulation. For juvenile detention registers, 37 TAC 343.108, prescribes the retention period listed on the schedule because §343.220 requires creating the roster.

Comment: Denton County commented generally on Juvenile Case Exhibits. Commenter questioned, do exhibits fall within the definition of a local government record? If they are not records, why are there record series for exhibits on local schedules CC and DC? If they are not records, can TSLAC include them in the list of non-records in Bulletin D? If they are records, please add guidance for retention of juvenile case exhibits to schedules CC and DC.

Response: The Commission does not consider any exhibits to fall under the category of local government record. Some exhibits, like reports and audiovisual records, are records in other contexts. But exhibits such as contraband, firearms, and items containing biological materials do not meet the definition of a record found in Local Government Code 201.003(8). The Commission includes guidance on retention and disposition of exhibits on local schedules CC and DC as helpful information, but the agency does not advise or assist on the proper handling of exhibits. The Commission cannot add exhibits to the list of non-records in Bulletin D because Bulletin D collects statutes relevant to managing local government records. Only the Legislature can amend statutes. The Commission declines to update courtesy guidance on retention and disposition of exhibits at this time because it falls outside the scope of revising the juvenile records series on local schedules CC, DC, PS, and LC.

Comment: City of Fort Worth commented on LC2450-01. Commenter suggests changing Record Title to Video and Audio Recordings of Juveniles Detention Hearings. Recommend a different wording for the retention period to make it clearer and more user friendly.

Response: The Commission declines to change Record Title to promote consistent titles across court schedules CC, DC, and LC. Record Title enables future additions of video and audio recordings subseries without major changes to schedule. The Commission agrees with commenter about Retention Period and revised wording of LC2450-01.

At its meeting on February 8, 2019, the Commission adopted the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Texas Government Code, Section 441.158, which requires the Commission to adopt records retention schedules for local

governments by rule, and Texas Government Code, Section 441.160, which allows the commission to revise the schedules.

§7.125. Records Retention Schedules.

(a) The following records retention schedules required to be adopted by rule under Government Code §441.158(a) are adopted.

(1) Local Schedule GR: Records Common to All Local Governments, Revised 5th Edition.

Figure: 13 TAC §7.125(a)(1) (No change.)

(2) Local Schedule PW: Records of Public Works and Other Government Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(2) (No change.)

(3) Local Schedule CC: Records of County Clerks, Revised 3rd Edition.

Figure: 13 TAC §7.125(a)(3)

(4) Local Schedule DC: Records of District Clerks, Revised 3rd Edition.

Figure: 13 TAC §7.125(a)(4)

(5) Local Schedule PS: Records of Public Safety Agencies, Revised 4th Edition.

Figure: 13 TAC §7.125(a)(5)

(6) Local Schedule SD: Records of Public School Districts, 3rd Edition.

Figure: 13 TAC §7.125(a)(6) (No change.)

(7) Local Schedule JC: Records of Public Junior Colleges, 2nd Edition.

Figure: 13 TAC §7.125(a)(7) (No change.)

(8) Local Schedule LC: Records of Justice and Municipal Courts, Revised 2nd Edition.

Figure: 13 TAC §7.125(a)(8)

(9) Local Schedule TX: Records of Property Taxation, 3rd Edition.

Figure: 13 TAC §7.125(a)(9) (No change.)

(10) Local Schedule EL: Records of Elections and Voter Registration, 3rd Edition.

Figure: 13 TAC §7.125(a)(10) (No change.)

(11) Local Schedule HR: Records of Public Health Agencies, 2nd Edition.

Figure: 13 TAC §7.125(a)(11) (No change.)

(12) Local Schedule UT: Records of Utility Services, 2nd Edition.

Figure: 13 TAC §7.125(a)(12) (No change.)

(b) The retention periods in the records retention schedules adopted under subsection (a) of this section serve to amend and replace the retention periods in all editions of the county records manual published by the commission between 1978 and 1988. The retention periods in the manual, which were validated and continued in effect by Government Code §441.159, until amended, are now without effect.

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

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TRD-201900743

Craig Kelso
Director
Texas State Library and Archives Commission
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Proposal publication date: December 14, 2018
For further information, please call: (512) 463-5534



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 175. FEES AND PENALTIES

22 TAC §175.2

The Texas Medical Board adopts amendments to §175.2, concerning Registration and Renewal Fees. The amendments are adopted without changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8220). The adopted amendments will not be republished.

No comments were received regarding the proposed amendments to §175.2.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §204.101. The amendments are also adopted under the authority of Senate Bill 1625, 85th Legislature, Regular Session.

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

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Scott Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 186. RESPIRATORY CARE PRACTITIONERS

22 TAC §186.4, §186.28

The Texas Medical Board (Board) adopts amendments to §186.4, concerning Procedural Rules and Qualifications for Certificate Applicants and §186.28, concerning Retired Certificate. The amendments to §186.4 are being adopted with changes to the proposed text as published in the October 12, 2018, issue of the *Texas Register* (43 Tex Reg 6736). The adopted amendments will be republished. The amendments to §186.28 are adopted without changes to the proposed text and will not be republished.

The amendment to §186.4 deletes language in subsection (a)(14)(B) and old (a)(14)(E) requiring certificate applicants to pass the jurisprudence exam within three attempts. The amendment also renumbers (a)(14)(F) to become new (a)(14)(E). This change is made to align the rules with recent rule amendments repealing jurisprudence exam attempt limits for individuals

applying for a medical license, made pursuant to Senate Bill 674 (85th Legislature, Regular Session). It is the Board's interpretation of SB 674 that the legislature determined repeated attempts at passage of the jurisprudence examination has little to no weight as to competency to practice, was an unnecessary bar to licensure, and intended to eliminate unnecessary bars to licensure for all applicants applying for licensure under the Texas Medical Board's and advisory boards' jurisdiction.

The amendment to §186.28 deletes language in paragraph (3) requiring retired certificate holders who wish to return to active status to provide professional evaluations from each employment held before his or her certificate was placed on retired status. This change is made because little to no value was gained from these professional evaluations, due to the difference in time between the past employment and the desired reactivation of the retired license.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated §604.052, which provides authority for the Board to recommend rules necessary to administer and enforce Chapter 604 of the Texas Occupations Code. The amendments are also adopted under the authority of the Texas Occupations Code Annotated §604.154, which provides authority for the Board to establish continuing education requirements.

§186.4. *Procedural Rules and Qualifications for Certificate Applicants.*

(a) Except as otherwise provided in this section, an individual applying for a respiratory care practitioner certificate issued by the advisory board must:

(1) submit an application on forms approved by the advisory board;

(2) pay the appropriate application fee as prescribed by the advisory board and as set forth in §175.1 of this title (relating to Application and Administrative Fees);

(3) successfully complete an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency;

(4) successfully complete an educational program for respiratory care practitioners accredited by the Commission on Accreditation for Respiratory Care (CoARC) or other accrediting body approved by the advisory board, and hold a valid and current certification issued by the NBRC;

(5) certify that the applicant is mentally and physically able to function safely as a respiratory care practitioner;

(6) not have a license, certification, or registration as a respiratory care practitioner in this state or from any other licensing or certifying authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause;

(7) not have any proceeding that has been instituted against the applicant for the restriction, cancellation, suspension, or revocation of a certificate, permit, license, or other authority to practice respiratory care in any state, territory, Canadian province, country, or uniformed service of the United States in which it was issued;

(8) not have pending any prosecution against applicant in any state, federal, or international court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice

of respiratory care, or a misdemeanor that involves a crime of moral turpitude;

(9) be of good professional character as defined under §186.2(15) of this chapter (relating to Definitions);

(10) submit a complete and legible set of fingerprints, on a form prescribed by the Medical Board, for the purpose of obtaining criminal history record information, as required by §604.1031 of the Act;

(11) submit to the board any other information the board considers necessary to evaluate the applicant's qualifications;

(12) meet any other requirement established by rules adopted by the advisory board;

(13) pass an independently evaluated respiratory care practitioner examination prepared by the NBRC; and

(14) pass the jurisprudence examination ("JP exam"), which shall be conducted on the certification requirements and other laws, rules, or regulations applicable to the respiratory care practitioner profession in this state. The jurisprudence examination shall be developed and administered as follows:

(A) the staff of the Medical Board shall prepare questions for the JP exam and provide a facility by which applicants can take the examination;

(B) applicants must pass the JP exam with a score of 75 or better;

(C) an examinee shall not be permitted to bring books, compends, notes, journals, calculators, "smart phones," cellular phones, or other devices or materials designed to assist examinee pass the exam into the examination room, nor be allowed to communicate by word or sign with another examinee while the examination is in progress without permission of the presiding examiner, nor be allowed to leave the examination room except when so permitted by the presiding examiner;

(D) irregularities during an examination such as giving or obtaining unauthorized information or aid as evidenced by observation or subsequent statistical analysis of answer sheets, shall be sufficient cause to terminate an applicant's participation in an examination, invalidate the applicant's examination results, or take other appropriate action; and

(E) a person who has passed the JP Exam shall not be required to retake the Exam for recertification, except as a specific requirement of the advisory board as part of an agreed order.

(b) The following documentation shall be submitted as a part of the certificate application process:

(1) Birth Certificate/Proof of Age. Each applicant for a certificate must provide a copy of a birth certificate and translation if necessary to prove that the applicant is at least 18 years of age. In instances where a birth certificate is not available the applicant must provide copies of a passport or other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present certified copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the advisory board for inspection.

(3) Certification. Each applicant for a respiratory care practitioner certificate issued by the advisory board must submit:

(A) a letter of verification of current certification acceptable to the advisory board, sent directly from the certifying body; and

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the advisory board.

(4) Examination Scores. Each applicant for a respiratory care practitioner certificate issued by the advisory board must have a certified transcript of grades submitted directly from the appropriate testing service to the advisory board for all examinations accepted by the advisory board for issuance of a certificate. The advisory board must notify the applicant of the results of the examination in accordance with §604.1042 of the Act.

(5) Evaluations.

(A) All applicants must provide evaluations, on forms provided by the board, of their professional affiliations for the past three years or since graduation from an educational program described by subsection (a)(4) of this section, whichever is the shorter period.

(B) The evaluations must come from at least three supervisors or instructors who are either Texas state-certified respiratory care practitioners or licensed physicians and have each supervised the applicant's work experience.

(C) An exception to subparagraph (B) of this paragraph may be made for those applicants who provide adequate documentation that they have not been supervised by at least three licensed physicians or Texas state-certified respiratory care practitioners for the three years preceding the board's receipt of application or since graduation, whichever is the shorter period.

(6) Verification from Other States. On request of Medical Board staff, an applicant must have any state, in which he or she has ever been certified or otherwise licensed as a respiratory care practitioner regardless of the current status of the certification or license, submit to the advisory board a letter verifying the status of the certificate or license and a description of any sanctions or pending disciplinary matters. The information must be sent directly from the state certifying or licensing entities. Such information may be considered in accordance with §604.106 of the Act.

(7) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition must be requested from the arresting authority and that authority must submit copies of such records directly to the advisory board.

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

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

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

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

(c) Review and Recommendations by the Executive Director.

(1) The executive director or designee shall review each application for a respiratory care practitioner certificate and may determine whether an applicant is eligible for a certificate or refer an application to a committee of the advisory board for review.

(2) If the executive director or designee determines that the applicant clearly meets all requirements for a certificate, the executive director or designee may issue a certificate to the applicant, to be effective on the date issued without formal board approval, as authorized by §604.110 of the Act.

(3) If the executive director determines that the applicant does not clearly meet all requirements for a certificate as prescribed by the Act and this chapter, a certificate may be issued only upon action by the advisory board following a recommendation by the Practice Authorization Committee, in accordance with §604.110 and §604.209 of the Act and §187.13 of this title (relating to Informal Board Proceedings Relating to Licensure Eligibility). Not later than the 20th day after the date the applicant receives notice of the executive director's determination the applicant shall:

(A) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(B) withdraw his or her application.

(C) If an applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(4) To promote the expeditious resolution of any certificate issuance matter, the executive director, with the approval of the board, may recommend that an applicant be eligible for a certificate, but only under certain terms and conditions, and may present a proposed agreed order or remedial plan to the applicant. Not later than the 20th day after the date the applicant receives notice of the executive director's recommendation, the applicant shall do one of the following:

(A) sign the order/remedial plan and the order/remedial plan shall be presented to the board for consideration and acceptance without initiating a disciplinary licensure investigation (as defined in §187.13 of this title) or appearing before a committee of the board concerning issues relating to certificate eligibility; or

(B) request a review of the executive director's recommendation by a committee of the board conducted in accordance with §187.13 of this title; or

(C) withdraw his or her application.

(D) If the applicant fails to take timely action, as provided under this subsection, such inaction shall be deemed a withdrawal of his or her application.

(d) Committee Referrals. An applicant who has either requested to appear before the Practice Authorization Committee of the advisory board or has elected to be referred to the Practice Authorization Committee of the board due to a determination of ineligibility by the executive director in accordance with this section, in lieu of withdrawing the application for a certificate, may be subject to a Disciplinary Licensure Investigation as defined by §187.13 of this chapter. Review of the executive director's determination by a committee of the board shall be conducted in accordance with §187.13 of this chapter.

(e) All respiratory care practitioner applicants shall provide sufficient documentation to the advisory board that the applicant has, on a full-time basis, actively practiced as a respiratory care practitioner, has been a student at an acceptable approved respiratory care practitioner program, or has been on the active teaching faculty of an acceptable approved respiratory care practitioner program, within either of the last two years preceding receipt of an application for a respiratory care practitioner certificate. The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year. Applicants who are unable to demonstrate active practice on a full time basis may, in the discretion of the advisory board, be eligible for an unrestricted certificate or a restricted certificate subject to one or more of the following conditions or restrictions as set forth in paragraphs (1) - (4) of this subsection:

(1) completion of approved continuing education in those topics specified by the advisory board;

(2) limitation and/or exclusion of the practice of the applicant to specified activities of the practice as a respiratory care practitioner;

(3) remedial education; and

(4) such other remedial or restrictive conditions or requirements which, in the discretion of the advisory board, are necessary to ensure protection of the public and minimal competency of the applicant to safely practice as a respiratory care practitioner.

(f) Applicants for a respiratory care practitioner certificate:

(1) whose applications have been filed with the advisory board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited unless otherwise provided by §175.5 of this title (relating to Payment of Fees or Penalties). Any further request for issuance of a certificate will require submission of a new application and inclusion of the current fee. An extension to an application may be granted under certain circumstances, including:

(A) delay by advisory board staff in processing an application;

(B) application requires Practice Authorization Committee review after completion of all other processing and will expire prior to the next scheduled meeting;

(C) Practice Authorization Committee requires an applicant to meet specific additional requirements for certification and the application will expire prior to deadline established by the Committee;

(D) applicant requires a reasonable, limited additional period of time to obtain documentation after completing all other requirements and demonstrating diligence in attempting to provide the required documentation;

(E) applicant is delayed due to unanticipated military assignments, medical reasons, or catastrophic events;

(2) who in any way falsify the application may be required to appear before the advisory board;

(3) on whom adverse information is received by the advisory board may be required to appear before the advisory board;

(4) shall be required to comply with the advisory board's rules and regulations which are in effect at the time the completed application form and fee are filed with the advisory board;

(5) may be required to sit for additional oral or written examinations that, in the opinion of the advisory board, are necessary to determine competency of the applicant;

(6) must have the application for a certificate complete in every detail 20 days prior to the advisory board meeting in which they are considered for approval. Applicants may qualify for a Temporary Permit prior to being considered by the advisory board for issuance of a certificate, as required by §186.7 of this chapter (relating to Temporary Permit);

(7) who previously held a Texas health care provider license, certificate, permit, or registration may be required to complete additional forms as required.

(g) Alternative Certification Procedure for Military Service Members, Military Veterans, and Military Spouses:

(1) An applicant who is a military service member, military veteran, or military spouse, as defined in §186.2 of this chapter (relating to Definitions), may be eligible for alternative demonstrations of competency for certain Texas state-certification requirements. Unless specifically allowed in this subsection, an applicant must meet the requirements for certification as specified in this chapter.

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

(A) holds an active unrestricted respiratory care practitioner certificate or license issued by another state that has certification or licensure requirements that are substantially equivalent to the requirements for a Texas respiratory care practitioner certificate; or

(B) within the five years preceding the application date, applicant must have held a respiratory care practitioner certificate in this state that expired and was cancelled for nonpayment while the applicant lived in another state for at least six months.

(3) Applications for a respiratory care practitioner certificate from applicants qualifying under paragraphs (1) and (2) of this subsection shall be expedited by the Medical Board's licensure division.

(4) Alternative Demonstrations of Competency Allowed. Applicants qualifying under paragraphs (1) and (2) of this subsection:

(A) in demonstrating compliance with subsection (e) of this section must only provide sufficient documentation to the advisory board that the applicant has, on a full-time basis, actively practiced as a respiratory care practitioner, has been a student at an acceptable approved respiratory care practitioner program, or has been on the active teaching faculty of an acceptable approved respiratory care practitioner program, within one of the last three years preceding receipt of an application for a respiratory care practitioner certificate;

(B) notwithstanding the one year expiration in subsection (f)(1) of this section, are allowed an additional 6 months to complete the application prior to it becoming inactive; and

(C) notwithstanding the 20 day deadline in subsection (f)(6) of this section, may be considered for a certificate up to 5 days prior to the advisory board meeting.

(h) Applicants with Military Experience.

(1) For applications filed on or after March 1, 2014, the advisory board shall, with respect to an applicant who is a military service member or military veteran as defined in §186.2 of this chapter (relating to Definitions), credit verified military service, training, or education toward the certification requirements, other than an examination requirement, for a respiratory care practitioner certificate issued by the advisory board.

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

(A) has had a respiratory care practitioner certificate or license suspended or revoked by another state or a Canadian province;

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

(C) has an unacceptable criminal history.

(i) Re-Application for Certificate Prohibited. A person who has been determined ineligible for a respiratory care practitioner certificate by the Practice Authorization Committee may not reapply for a certificate prior to the expiration of one year from the date of the advisory board's ratification of the Practice Authorization Committee's determination of ineligibility and denial of a certificate.

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

Filed with the Office of the Secretary of State on March 11, 2019.

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Scott M. Freshour

General Counsel

Texas Medical Board

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For further information, please call: (512) 305-7016



22 TAC §186.10

The Texas Medical Board (Board) adopts amendments to §186.10, concerning Continuing Education Requirements. The amendments to §186.10 are being adopted without changes to the proposed text as published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7641). The adopted amendments will not be republished.

The amendments to §186.10 clarify when continuing education (CE) credit is granted to Respiratory Care Practitioners for completion of an academic semester unit or hour. Previously, the rule did not specify what kind of coursework qualified for this CE credit. The amendments make clear that the academic semester unit or hour must be part of the curriculum of a respiratory care education program or a similar education program in another health-care related field offered by an accredited institution. Additionally, the amendments specify that the 15 contact hour credit will be granted in non-traditional CE.

No comments were received on the proposed amendments.

The amendments are adopted under the authority of the Texas Occupations Code Annotated §604.052, which provides authority for the Board to recommend rules necessary to administer and enforce Chapter 604 of the Texas Occupations Code. The amendments are also adopted under the authority of the Texas Occupations Code Annotated §604.154, which provides authority for the Board to establish continuing education requirements.

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

Filed with the Office of the Secretary of State on March 11, 2019.

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Scott Freshour
General Counsel
Texas Medical Board
Effective date: March 31, 2019
Proposal publication date: November 23, 2018
For further information, please call: (512) 305-7016



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §139.21, concerning General Requirements for Licensure; §139.22, concerning Fees; §139.23, concerning Application Procedures and Issuance of Licenses; §139.24, concerning Change of Ownership or Services, Change of Physical Location, and Closure of a Licensed Abortion Facility; §139.25, concerning Time Periods for Processing and Issuing a License; and §139.31, concerning On-Site Inspections and Complaint Investigations of a Licensed Abortion Facility. The amendments to §§139.21 - 139.25, and 139.31 are adopted without changes to the proposed text as published in the December 21, 2018, issue of the *Texas Register* (43 TexReg 8222), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments are necessary to update existing abortion facility initial licensing requirements to require a pre-licensing inspection and to require an initial license application when a licensed abortion facility seeks to change its physical location. The current existing rules became effective June 28, 2009, and require updating due to HHSC assuming the duties of the Department of State Health Services (Department) on September 1, 2017. Title 25 of the Texas Administrative Code Chapter 139 implements the Texas Health and Safety Code Chapter 245.

COMMENTS

The 30-day comment period ended January 20, 2019. During this period, HHSC did not receive any comments regarding the proposed rules.

SUBCHAPTER B. LICENSING PROCEDURES

25 TAC §§139.21 - 139.25

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the rules implement Texas Health and Safety Code Chapters 171 and 245; and Texas Government Code Chapter 531.

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

Filed with the Office of the Secretary of State on March 6, 2019.

TRD-201900764
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: March 26, 2019
Proposal publication date: December 21, 2018
For further information, please call: (512) 424-6968



SUBCHAPTER C. ENFORCEMENT

25 TAC §139.31

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and the rules implement Texas Health and Safety Code Chapters 171 and 245; and Texas Government Code Chapter 531.

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

Filed with the Office of the Secretary of State on March 6, 2019.

TRD-201900765
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: March 26, 2019
Proposal publication date: December 21, 2018
For further information, please call: (512) 424-6968



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.

Adopted Rule Reviews

Texas A&M Forest Service

Title 4, Part 12

Chapter 215, Forest Zone Determination Procedure

The Texas A&M Forest Service (Agency) adopts the review of Chapter 215 of the Texas Administrative Code, Title 4, Part 12, concerning the Forest Zone Determination Procedure, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review the rule was published in the February 8, 2019, issue of the *Texas Register* (44 TexReg 593). No comments were received on the proposed rule review.

The Agency finds that the reasons for adopting the rule continue to exist. The rule is not obsolete, reflects current legal and policy considerations, and reflects current procedures of the Agency. The Agency, therefore, readopts Chapter 215.

TRD-201900799

Robby DeWitt

Associate Director for Finance and Administration

Texas A&M Forest Service

Filed: March 12, 2019



Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter E (relating to Direction of Affairs), of the Texas Administrative Code (TAC), Title 7, Part 6, consisting of §§91.501 - 91.503, 91.510, 91.515, and 91.516. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Department's general rule review under Texas Government Code, Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter E, was published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7685) as required. The Department received no comments on the notice of intention to review.

As a result of the internal review by the Department, the Commission has determined that no revisions are appropriate and necessary. The

Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter E, in accordance with the requirements of Texas Government Code, Section 2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapter E.

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

TRD-201900780

John J. Kolhoff

Commissioner

Credit Union Department

Filed: March 8, 2019



The Credit Union Commission (Commission) has completed its review of Chapter 91, Subchapter F (relating to Accounts and Services), of the Texas Administrative Code (TAC), Title 7, Part 6, consisting of §§91.601, 91.602, 91.608, and 91.610. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Department's general rule review under Texas Government Code, Section 2001.039.

Notice of the review of 7 TAC, Part 6, Chapter 91, Subchapter F, was published in the November 23, 2018, issue of the *Texas Register* (43 TexReg 7685) as required. The Department received no comments on the notice of intention to review.

As a result of the internal review by the Department, the Commission has determined that no revisions are appropriate and necessary. The Commission finds that the reasons for initially adopting these rules continue to exist, and readopts Chapter 91, Subchapter F, in accordance with the requirements of Texas Government Code, Section 2001.039. This concludes the review of 7 TAC, Part 6, Chapter 91, Subchapter F.

TRD-201900781

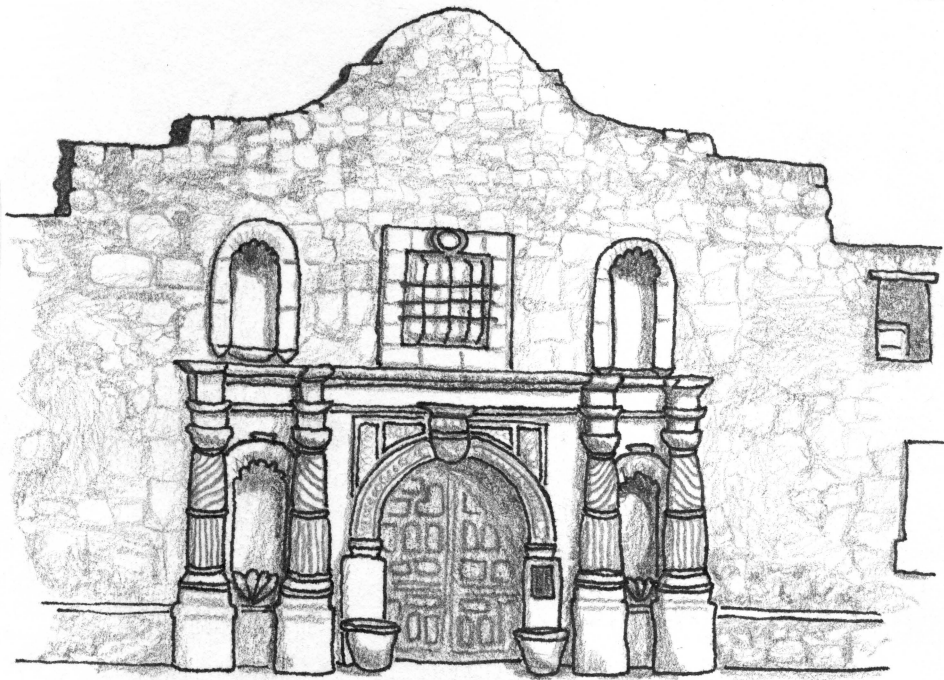
John J. Kolhoff

Commissioner

Credit Union Department

Filed: March 8, 2019





IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Alamo Area Metropolitan Planning Organization

RFP - Rideshare Matching Service

The Alamo Area Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to provide an online, real time carpool matching service and a viable and accurate method of gathering data on vehicle miles saved and emissions reductions achieved through carpooling and other transportation modes of the individuals participating in the program within the AAMPO study area.

A copy of the Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from the MPO's website at www.alamoareampo.org or calling Jeanne Geiger, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (noon, CT), Thursday, April 18, 2019, at the MPO office to:

Isidro "Sid" Martinez

Director

Alamo Area MPO

825 S. St. Mary's Street

San Antonio, Texas 78205

Funding for this project, in the amount of \$150,000, is contingent upon the availability of Federal transportation planning funds.

TRD-201900801

Jeanne Geiger

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: March 13, 2019

Brazos River Authority

Brazos River Authority Drought Contingency Plan

The Brazos River Authority is now accepting public comments on updates to its Draft Drought Contingency Plan. To access the Brazos River Authority's Draft Drought Contingency Plan (DCP) and submit comments online, visit <http://www.brazos.org/>.

Please mail written comments to:

Brazos River Authority

Attn: Chris Higgins

P.O. Box 7555

Waco, Texas 76714-7555

The comment period will remain open until April 21, 2019.

TRD-201900784

Chris Higgins

Senior Hydrologist

Brazos River Authority

Filed: March 11, 2019

Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2019

A 1 1/2 percent local sales and use tax will become effective April 1, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Plantersville (Grimes Co)	2093062	.020000	.082500

The 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair will be abolished March 31, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Three Rivers (Live Oak Co)	2149020	.017500	.080000

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Trinidad (Henderson Co)	2107039	.017500	.080000

An additional 1/2 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Seminole (Gaines Co)	2083019	.020000	.082500

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will become effective April 1, 2019 in the city listed below.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Providence Village (Denton Co)	2061355	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) and the additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will each be reduced to 1/4 percent effective March 31, 2019 and an additional 1/2 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Justin (Denton Co)	2061060	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective March 31, 2019 and an additional 1/2 percent sales and use tax for Municipal Street Maintenance and

Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Seagraves (Gaines Co)	2083028	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be reduced to 1/4 percent effective March 31, 2019 and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Converse (Bexar Co)	2015147	.020000	.082500

The 1/2 percent Fort Worth MTA sales tax has been repealed and will be abolished effective March 31, 2019. The additional 1/8 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code, Type B Corporations (4B) will be increased to 1/4 percent and an additional 3/8 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2019 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Richland Hills (Tarrant Co)	2220157	.020000	.082500

The 1 percent special purpose district sales and use tax will increase to 1 1/2 percent effective April 1, 2019 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Brewster County Emergency Services District No.1	5022503	.020000	.082500

A 1 percent special purpose district sales and use tax will become effective April 1, 2019 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Hays County Emergency Services District No. 4	5105638	.010000	SEE NOTE 1
Jefferson County Assistance District No. 4	5123501	.010000	SEE NOTE 2

A 1 1/4 percent special purpose district sales and use tax will become effective April 1, 2019 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Ector County Assistance District	5068535	.012500	SEE NOTE 3

A 1 1/2 percent special purpose district sales and use tax will become effective April 1, 2019 in the special purpose districts listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Bexar County Emergency Services District No. 12	5015664	.015000	SEE NOTE 4
Liberty County Municipal Management District No. 1	5146513	.015000	SEE NOTE 5

A 1 3/4 percent special purpose district sales and use tax will become effective April 1, 2019 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Henderson County Emergency Services District No. 6	5107510	.017500	SEE NOTE 6

A 2 percent special purpose district sales and use tax will become effective April 1, 2019 in the special purpose district listed below.

SPD NAME	LOCAL CODE	LOCAL RATE	DESCRIPTION
Kaufman County Assistance District No. 1	5129523	.020000	SEE NOTE 7

NOTE 1: The Hays County Emergency Services District No. 4 is located in the east central portion of Hays County, which has a county sales and use tax. The district excludes the cities of Wimberley and Woodcreek for sales tax purposes. The district partially overlaps territory in the Wimberley Village Library District, which has a special purpose district sales and use tax. The unincorporated areas of Hays County in ZIP Codes 78619, 78666 and 78676 are partially located in the Hays County Emergency Services District No. 4. Contact the district representative at 512-847-3536 for additional boundary information.

NOTE 2: The Jefferson County Assistance District No. 4 is located in the central portion of Jefferson County, which has a county sales and use tax. The unincorporated areas of Jefferson County in ZIP Codes 77705 and 77713 are partially located within the Jefferson County Assistance District No. 4. Contact the district representative at 409-434-5400 for additional boundary information.

NOTE 3: The boundaries of the Ector County Assistance District are the same boundaries as Ector County, which has a county-wide hospital district that imposes a special purpose district sales and use tax. The district excludes the cities of Goldsmith and Odessa except for areas in the city of Odessa annexed on or after Nov. 27, 2018. This annexation created the unique area known as the Odessa/Ector County Assistance District Combined Area (6068606). Sales in this unique area must be reported using the combined local code of 6068606. Contact the district representative at 432-498-4100 for additional boundary information.

NOTE 4: The Bexar County Emergency Services District No. 12 is located in the eastern portion of Bexar County and is located entirely within the San Antonio MTA, which has a transit sales and use tax. The district excludes, for sales tax purposes, any area within the city of Saint Hedwig. Unincorporated areas of Bexar County in ZIP Codes 78101, 78109, 78124, 78152, 78223 and 78263 are partially located within the Bexar County Emergency Services District No. 12.

Contact the district representative at 210-416-9852 for additional boundary information.

NOTE 5: The Liberty County Municipal Management District No. 1 is located in the northwestern portion of Liberty County, which has county sales and use tax. The unincorporated areas of Liberty County in ZIP Code 77327 are partially located in the Liberty County Municipal Management District No. 1. Contact the district representative at 713-651-0111 for additional boundary information.

NOTE 6: The Henderson County Emergency Services District No. 6 is located in the central eastern portion of Henderson County and excludes any area within the cities of Chandler or Coffee City. The unincorporated areas of Henderson County in ZIP Codes 75770 and 75758 are partially located within the Henderson County Emergency Services District No. 6. Contact the district representative at 713-560-8061 for additional boundary information.

NOTE 7: The Kaufman County Assistance District No. 1 is located in the northwestern portion of Kaufman County. The unincorporated areas of Kaufman County in ZIP Code 75126 are partially located within the Kaufman County Assistance District No. 1. Contact the district representative at 469-376-4570 for additional boundary information.

TRD-201900763
William Hamner
Special Counsel for Tax Administration
Comptroller of Public Accounts
Filed: March 6, 2019



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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/18/19 - 03/24/19 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/18/19 - 03/24/19 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201900793
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 12, 2019



Texas Education Agency

Public Notice Seeking Preliminary Public Comment on Texas Education Agency's (TEA's) Proposed Career and Technical Education (CTE) Programs of Study

Filing Date. March 13, 2019

The TEA is inviting preliminary public comment on the Proposed Statewide CTE Programs of Study developed pursuant to the Strength-

ening Career and Technical Education for the 21st Century Act signed by the president on July 31, 2018.

The Proposed Statewide CTE Programs of Study is available on the TEA website at <https://tea.texas.gov/cte/>. Instructions for submitting public comments are available from the same site.

The Proposed Statewide CTE Programs of Study will also be available at the TEA Library (Ground Floor, Room G-102), William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Parties interested in reviewing the Proposed Statewide CTE Programs of Study at the William B. Travis location should contact the TEA Division of College, Career, and Military Preparation at (512) 463-9661.

Procedures for Submitting Written Comments. The TEA will accept written comments pertaining to the Proposed Statewide CTE Programs of Study by mail to the TEA, Division of College, Career, and Military Preparation, 1701 North Congress Avenue, Austin, Texas 78701-1494 or by email to ccmp@tea.texas.gov. Comments must be submitted by Monday, May 17, 2019.

Timetable for Finalizing the Statewide CTE Programs of Study. After review and consideration of all public comments, the TEA will make necessary or appropriate modifications and will post the final Statewide CTE Programs of Study on the TEA website at <https://tea.texas.gov/cte/>.

For more information, contact the TEA Division of College, Career, and Military Preparation by mail at 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9661; or by email at ccmp@tea.texas.gov.

TRD-201900802
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: March 13, 2019



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 **April 22, 2019**. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **April 22, 2019**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: ACME BRICK COMPANY; DOCKET NUMBER: 2018-1209-AIR-E; IDENTIFIER: RN100225184; LOCATION: Mill-sap, Parker County; TYPE OF FACILITY: brick and structural clay tile manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O1597, General Terms and Conditions (GTC) and Special Terms and Conditions Number 10, New Source Review Permit Number 25937, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rates; 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1597, GTC, and THSC, §382.085(b), by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O1597, GTC, and THSC, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; PENALTY: \$63,423; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bells Petro, Incorporated dba Bells Market; DOCKET NUMBER: 2018-1754-PST-E; IDENTIFIER: RN103028254; LOCATION: Bells, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$4,249; ENFORCEMENT COORDINATOR: Chase Davenport, (512) 239-2615; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BLESSINGS ENTERPRISES, INCORPORATED dba Kountry Food Store 2; DOCKET NUMBER: 2018-1584-PST-E; IDENTIFIER: RN102429529; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Marla Waters, (512) 239-4712; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Brazos Electric Power Cooperative, Incorporated; DOCKET NUMBER: 2018-1744-AIR-E; IDENTIFIER: RN100221985; LOCATION: Bridgeport, Jack County; TYPE OF FACILITY: electric power generation plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O2169, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to report all instances of deviations, and failing to comply with the carbon monoxide (CO) three-hour rolling average concentration limit of 11.0 parts per million by volume, dry at 15% oxygen for three hours, and the CO hourly maximum allowable emissions rate (MAER) of 59.0 pounds per hour for one hour on January 12, 2018, and the nitrogen oxides hourly MAER for two hours on January 16, 2018, and one hour on February 25, 2018, for emissions point number HRSG-3; PENALTY: \$625; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City Mart Energy, LLC dba Gardendale Grocery; DOCKET NUMBER: 2019-0093-PST-E; IDENTIFIER: RN101730703; LOCATION: Gardendale, Ector County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every 30 days; PENALTY: \$6,750; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: City of Elsa; DOCKET NUMBER: 2018-1103-WQ-E; IDENTIFIER: RN106088248; LOCATION: Elsa, Hidalgo County; TYPE OF FACILITY: small municipal separate storm sewer system (MS4); RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(a)(9)(i)(A), by failing to obtain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System General Permit for a MS4; PENALTY: \$11,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$9,000; ENFORCEMENT COORDINATOR: Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: City of San Angelo; DOCKET NUMBER: 2018-1199-AIR-E; IDENTIFIER: RN110458684; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: portable asphalt recycling; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing or modifying a source of air contaminants; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Robyn Babyak, (512) 239-1853; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(8) COMPANY: Clifton Turner dba Joshua Park Grocery; DOCKET NUMBER: 2018-1542-PST-E; IDENTIFIER: RN101772333; LOCATION: Levelland, Hockley County; TYPE OF FACILITY:

convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued 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; and 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; PENALTY: \$3,373; ENFORCEMENT COORDINATOR: Tyler Richardson, (512) 239-4872; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(9) COMPANY: Donald R. Cole dba Harmony Water System; DOCKET NUMBER: 2017-1058-PWS-E; IDENTIFIER: RN105197024; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.41(c)(3)(K), by failing to provide the wellhead with the use of a gasket or a sealing compound and a casing vent that has an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated, and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.45(b)(1)(C)(ii), THSC, §341.0315(c), and TCEQ Agreed Order Docket Number 2014-1468-MLM-E, Ordering Provision Number 2.g.ii, by failing to provide a total storage capacity of at least 200 gallons per connection; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; 30 TAC §§290.46(f)(4), 290.115(e), and 290.122(c)(2)(A) and (f), by failing to provide the results of the Stage 2 Disinfectant Byproducts (DBP2) sampling to the ED for the January 1, 2015 - December 31, 2015, and January 1, 2016 - December 31, 2016, monitoring periods, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide the results of the DBP2 sampling to the ED for the January 1, 2015 - December 31, 2015, monitoring period; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay annual Public Health Service fees and annual associated late fees for TCEQ Financial Administration Account Number 91840166 for Fiscal Years 2011 - 2017; 30 TAC §290.106(c)(6) and §290.122(c)(2)(A) and (f), by failing to collect nitrate samples for the January 1, 2015 - December 31, 2015, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect nitrate samples for the January 1, 2015 - December 31, 2015, monitoring period; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites (taps) that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the July 1, 2014 - December 31, 2014, January 1, 2015 - June 30, 2015, and January 1, 2016 - December 31, 2016, monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to report synthetic organic chemical contaminants (methods 515 and 531), metals and minerals, and volatile organic chemical contaminants sampling results to the ED for the January 1, 2013 - December 31, 2015, monitoring period; PENALTY: \$2,650; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Enerflex Energy Systems Incorporated; DOCKET NUMBER: 2018-0010-AIR-E; IDENTIFIER: RN110026895; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: compressor refurbishing facility; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to operating a source of air emissions; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2018-1429-PWS-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.45(f)(2) and (3) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a purchase water contract that authorizes enough water to meet monthly or annual needs and establishes a maximum daily and hourly water drafting rate; 30 TAC §290.46(e)(3)(A) and THSC, §341.033(a), by failing to use a water works operator who holds a Class D or higher license; 30 TAC §290.46(z), by failing to create a Nitrification Action Plan for a system distributing chloraminated water; and 30 TAC §290.110(c)(5), by failing to conduct chloramine effectiveness sampling to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled; PENALTY: \$231; ENFORCEMENT COORDINATOR: Julianne Dewar, (512) 239-1001; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2017-0838-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit (FOP) Number O1373, Special Terms and Conditions Number 19, New Source Review Permit Number 6257E, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the maximum allowable emissions rate; and 30 TAC §122.143(4) and §122.145(2)(A), FOP Number O1373, General Terms and Conditions, and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$41,076; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$16,430; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2018-1514-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 18287, PSDTX730M4, and PAL7, Special Conditions Number 1, Federal Operating Permit Number O1229, General Terms and Conditions and Special Terms and Conditions Number 32, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$26,175; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,470; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2018-1573-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §§115.722(c)(1), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 18287, PSDTX730M4, and PAL7, Special Conditions Number 1, Federal Operating Permit Number O1229, General Terms and Conditions

and Special Terms and Conditions Numbers 1 and 32, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions, and failing to limit highly reactive volatile organic compounds emissions to 1,200 pounds or less per one-hour block period; PENALTY: \$25,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$12,500; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: German A. Priegue and Cinthia Priegue; DOCKET NUMBER: 2018-1580-PST-E; IDENTIFIER: RN102352689; LOCATION: Houston, Harris County; TYPE OF FACILITY: out-of-service underground storage tank (UST); RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, the UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: JNH Holding, Incorporated dba Artic Beer & Wine; DOCKET NUMBER: 2018-1253-PST-E; IDENTIFIER: RN101841088; LOCATION: The Colony, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: LAGUNA VISTA, LIMITED; DOCKET NUMBER: 2018-1291-PWS-E; IDENTIFIER: RN101276806; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.44(d) and §290.46(r), by failing to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as firefighting; and 30 TAC §290.46(q) and Texas Health and Safety Code, §341.0315(c), by failing to institute special precautions, protective measures, and boil water notices in the event of low distribution pressures (below 20 psi), water outages, microbiological samples found to contain *Escherichia coli* (or other approved fecal indicator), and failing to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised; PENALTY: \$974; ENFORCEMENT COORDINATOR: Ross Luedtke, (254) 761-3036; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Natgasoline LLC; DOCKET NUMBER: 2018-1635-AIR-E; IDENTIFIER: RN106586795; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: methanol manufacturing plant; RULES VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c), New Source Review Permit Numbers 107764 and PSDTX1340, Special Conditions Number 1, Permit Number GHGPSDTX54, General Conditions Number 8 and Annual Emissions Limits, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$147,000; ENFORCEMENT COORDI-

NATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: OM TJ, INCORPORATED dba T J Mart; DOCKET NUMBER: 2018-1564-PST-E; IDENTIFIER: RN102367117; LOCATION: Lakeside, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(d)(1)(D) and TWC, §26.3475(d), by failing to make appropriate repairs or modifications within 60 days of the corrosion specialist's determination that the underground storage tank (UST) system was not protected from corrosion; 30 TAC §334.50(d)(9)(A)(v) and §334.72, by failing to report suspected releases to the agency within 72 hours of discovery; and 30 TAC §334.74, by failing to investigate suspected releases of regulated substances within 30 days of discovery; PENALTY: \$62,140; ENFORCEMENT COORDINATOR: Berenice Munoz, (915) 834-4976; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Oxbow Calcining LLC; DOCKET NUMBER: 2018-1687-AIR-E; IDENTIFIER: RN100209287; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: coke calcining plant; RULES VIOLATED: 30 TAC §§101.21, 116.115(b)(2)(H)(i) and (c), and 122.143(4), 40 Code of Federal Regulations §50.17(a), New Source Review Permit Number 45622, General Conditions Number 13 and Special Conditions Number 25, Federal Operating Permit Number O1493, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to comply with the national primary one-hour annual ambient air quality standard for sulfur dioxide; PENALTY: \$39,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$15,600; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: Phyllis Gray Wier; DOCKET NUMBER: 2018-1507-PST-E; IDENTIFIER: RN101744621; LOCATION: Palestine, Anderson County; TYPE OF FACILITY: out-of-service facility; RULES VIOLATED: 30 TAC §334.7(d)(1)(B) and (3) and (e)(2), by failing to provide an amended registration for any change or additional information regarding the underground storage tank (UST) system within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, the UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(22) COMPANY: PRATT & WHITNEY SERVICES, INCORPORATED; DOCKET NUMBER: 2018-1347-IHW-E; IDENTIFIER: RN100693662; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: aeronautical repair facility; RULE VIOLATED: 30 TAC §335.2(b), by failing to not cause, suffer, allow, or permit the disposal of industrial and hazardous waste at an unauthorized facility; PENALTY: \$4,875; ENFORCEMENT COORDINATOR: Tyler Gerhardt, (512) 239-1661; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Raj Patel; DOCKET NUMBER: 2018-1446-WQ-E; IDENTIFIER: RN109697417; LOCATION: Longview, Gregg County; TYPE OF FACILITY: commercial construction site; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent the discharge of other waste into or adjacent to waters of the state; PENALTY: \$3,751;

ENFORCEMENT COORDINATOR: Caleb Olson, (817) 588-5856; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(24) COMPANY: Total Petrochemicals & Refining USA, Incorporated; DOCKET NUMBER: 2018-1445-AIR-E; IDENTIFIER: RN100909373; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 5264, Special Conditions Number 1, Federal Operating Permit Number O1447, General Terms and Conditions and Special Terms and Conditions Number 16, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rates; PENALTY: \$26,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$10,500; ENFORCEMENT COORDINATOR: Amanda Diaz, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: TX LFG Energy, LP; DOCKET NUMBER: 2018-1688-AIR-E; IDENTIFIER: RN102495421; LOCATION: Humble, Harris County; TYPE OF FACILITY: landfill gas-to-energy plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 44278, PS-DTX973, and N032, Special Conditions Number 1, Federal Operating Permit Number O2565, General Terms and Conditions and Special Terms and Conditions Number 8, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate; PENALTY: \$17,325; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Wyman-Gordon Forgings, Incorporated; DOCKET NUMBER: 2018-1434-IWD-E; IDENTIFIER: RN100217413; LOCATION: Cypress, Harris County; TYPE OF FACILITY: facility which manufactures extruded and forged metal products; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001402000, Effluent Limitations and Monitoring Requirements Number 1, Outfall Numbers 001 and 002, by failing to comply with permitted effluent limitations; PENALTY: \$39,637; ENFORCEMENT COORDINATOR: Harley Hobson, (432) 620-6138; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201900788

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 12, 2019



Enforcement Orders

An agreed order was adopted regarding City of Robstown, Docket No. 2017-1269-MWD-E on March 12, 2019 assessing \$6,900 in administrative penalties with \$1,380 deferred. Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUKHANI MANAGEMENT, LLC dba Airport Shell, Docket No. 2017-1305-PST-E on March 12, 2019 assessing \$6,900 in administrative penalties with \$1,380 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Faha Enterprises, Inc. dba Break Stop 3, Docket No. 2017-1354-PST-E on March 12, 2019 assessing \$2,698 in administrative penalties with \$539 deferred. Information concerning any aspect of this order may be obtained by contacting Ken Moller, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Diaz Recycle, L.L.C., Docket No. 2018-0285-MLM-E on March 12, 2019 assessing \$3,099 in administrative penalties with \$619 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Exclusive Star, Inc. dba Texas Express 3, Docket No. 2018-0326-PST-E on March 12, 2019 assessing \$3,724 in administrative penalties with \$744 deferred. Information concerning any aspect of this order may be obtained by contacting John Paul Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Helms Trail Properties, Inc., Docket No. 2018-0368-MWD-E on March 12, 2019 assessing \$7,051 in administrative penalties with \$1,410 deferred. Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Smiley, Docket No. 2018-0538-MWD-E on March 12, 2019 assessing \$4,838 in administrative penalties with \$967 deferred. Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2018-0651-PWS-E on March 12, 2019 assessing \$526 in administrative penalties with \$105 deferred. Information concerning any aspect of this order may be obtained by contacting Soraya Bun, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Point, Docket No. 2018-0682-PWS-E on March 12, 2019 assessing \$785 in administrative penalties with \$157 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Aqua Utilities, Inc., Docket No. 2018-0721-PWS-E on March 12, 2019 assessing \$165 in administrative penalties with \$33 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding IDALOU COOPERATIVE GIN COMPANY, Docket No. 2018-0755-PST-E on March 12, 2019 assessing \$1,626 in administrative penalties with \$325 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Fort Clark Springs Association, Inc., Docket No. 2018-0757-MSW-E on March 12, 2019 assessing \$813 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Marla Waters, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Minesh Patel and Nayna Patel dba Time Saver Grocery, Docket No. 2018-0808-PWS-E on March 12, 2019 assessing \$64 in administrative penalties with \$12 deferred. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding NORTH RUNNELS WATER SUPPLY CORPORATION, Docket No. 2018-0846-PWS-E on March 12, 2019 assessing \$703 in administrative penalties with \$140 deferred. Information concerning any aspect of this order may be obtained by contacting Toni Red, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nerro Supply, LLC, Docket No. 2018-0887-PWS-E on March 12, 2019 assessing \$150 in administrative penalties with \$30 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Luminant Mining Company LLC, Docket No. 2018-0941-AIR-E on March 12, 2019 assessing \$938 in administrative penalties with \$187 deferred. Information concerning any aspect of this order may be obtained by contacting Johnnie Wu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Double Diamond Utilities, Co., Docket No. 2018-1018-PWS-E on March 12, 2019 assessing \$118 in administrative penalties with \$23 deferred. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Steinhagen Oil Company, Inc. dba SOC FASTLANE, Docket No. 2018-1218-PWS-E on March 12, 2019 assessing \$464 in administrative penalties with \$92 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Sojourner Drilling Corp, Docket No. 2018-1468-PST-E on March 12, 2019 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Stephanie McCurley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Armor Energy, LLC, Docket No. 2018-1496-WR-E on March 12, 2019 assessing \$1,050 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding BARNETT CONTRACTING, INC., Docket No. 2018-1497-WR-E on March 12, 2019 assessing

\$420 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Tracy Logan, Docket No. 2018-1524-WR-E on March 12, 2019 assessing \$350 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Donal L. Brewer, Docket No. 2018-1610-WOC-E on March 12, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Aaron Vincent, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding James A. Austin, Docket No. 2018-1618-WOC-E on March 12, 2019 assessing \$175 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Saratoga Homes of Texas Austin LLC, Docket No. 2018-1633-WQ-E on March 12, 2019 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding PALO ALTO SILICA SAND, INC., Docket No. 2018-1661-WQ-E on March 12, 2019 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Brookside Homes, LLC, Docket No. 2018-1672-WQ-E on March 12, 2019 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was adopted regarding Kings Crossing Phase Four, Ltd., Docket No. 2018-1726-WQ-E on March 12, 2019 assessing \$875 in administrative penalties. Information concerning any aspect of this citation may be obtained by contacting Chase Davenport, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201900796
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2019



Notice of Availability of the First Submission of the Draft 2018 Texas Integrated Report of Surface Water Quality for the Federal Clean Water Act, §303(d) and §305(b) - Spring Creek (Segment 1008)

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the first submission of the Draft

2018 Texas Integrated Report of Surface Water Quality - Spring Creek (Segment 1008). The Integrated Report (IR) is developed as a requirement of the federal Clean Water Act (CWA), §303(d) and §305(b). The IR is an overview of the status of surface waters in the state. Factors considered in evaluating the status of water bodies include concerns for public health, fitness for use by aquatic species and other wildlife, and specific pollutants and their potential sources. The IR includes summaries of water bodies that do not support beneficial uses or water quality criteria and those water bodies that demonstrate cause for concern. The IR is used by the TCEQ to support water quality management activities including monitoring, water quality standards revisions, total maximum daily loads, watershed protection plans, and best management practices to control pollution sources.

Site-specific dissolved oxygen criteria for Spring Creek were adopted in the 2018 *Texas Surface Water Quality Standards* on February 7, 2018, and were approved by the United States Environmental Protection Agency (EPA) on November 2, 2018. However, because Spring Creek's site-specific dissolved oxygen criteria was not approved by EPA before the 2016 IR was completed, the TCEQ developed the first submission of the Draft 2018 IR to submit to EPA which will only include the assessment of Spring Creek. The remainder of the water bodies for the 2018 IR are currently being assessed. This assessment will be included as a second submission of the 2018 IR that will be developed later this year.

The first submission of the Draft 2018 IR will be available March 22, 2019, on the TCEQ's website at: https://www.tceq.texas.gov/waterquality/assessment/public_comment. Information regarding the public comment period may also be found on this website. Review and comment on Spring Creek (Segment 1008) and the summaries, as described in the first submission of the Draft 2018 IR contained on this website, are encouraged through the end of the comment period on April 22, 2019.

After the public comment period, the TCEQ will evaluate all additional data or information received. Changes made in response to any additional data or information submitted will be reflected in the first submission of the Draft 2018 IR which will be submitted to the EPA for approval.

The TCEQ will consider and respond to comments received during the comment period, in a "Response to Comments" document. The Response to Comments and the first submission of the Draft 2018 IR will be posted on the TCEQ's website when the TCEQ sends the first submission of the Draft 2018 IR to the EPA. Comments must be received by 5:00 p.m. on April 22, 2019. Information must be submitted in writing via e-mail, post, fax, or special delivery, and cannot be accepted by phone.

E-mail comments to 303d@tceq.texas.gov. Individuals unable to access the documents on the TCEQ's website may contact Andrew Sullivan by mail at Texas Commission on Environmental Quality, Water Quality Planning Division, MC 234, P.O. Box 13087, Austin, Texas 78711-3087 or by telephone at (512) 239-4587.

TRD-201900792

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 12, 2019



Notice of District Petition

Notice issued March 8, 2019

TCEQ Internal Control No. D-11142018-025; Lake Fork Water Supply Corporation (Petitioner) filed an application with the Texas Commission on Environmental Quality (TCEQ) to convert Lake Fork Water Supply Corporation to Lake Fork Special Utility District (District). Lake Fork Special Utility District's business address will be: P.O. Box 275, 8087 West FM 515, Yantis, Texas 75497. The petition was filed pursuant to Chapter 65 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of Lake Fork Water Supply Corporation and the organization, creation and establishment of Lake Fork Special Utility District of Hopkins and Wood Counties under the provisions of Article XVI, § 59 Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, as amended. The nature of the services presently performed by Lake Fork Water Supply Corporation is to purchase, own hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by Lake Fork Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/agency/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al

(512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201900798

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 12, 2019



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

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 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 **April 22, 2019**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building 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 April 22, 2019**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Comal Ag Operations, LLC and Santa Rita Land & Cattle Holdings, Ltd.; DOCKET NUMBER: 2017-0268-SLG-E; TCEQ ID NUMBER: RN108531716; LOCATION: on Youngsford Road, approximately 6,000 feet west-northwest of the intersection of Youngsford Road and Short Cut Road, Guadalupe County; TYPE OF FACILITY: domestic septage land application site; RULES VIOLATED: 30 TAC §312.50(c), by holding sewage sludge at a beneficial land application site prior to land application without authorization; 30 TAC §312.44(c)(1) and TCEQ Domestic Septage Registration Number 711013 (the Registration), Standard Provision Number V.D.3., by failing to maintain the required buffer zones for each application area; 30 TAC §312.47(b)(7) and the Registration, Standard Provision Number V.E.1., by failing to maintain pathogen reduction records; TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater and municipal waste into or adjacent to any water in the state; 30 TAC §312.82(b)(3)(D) and the Registration, Standard Provision Number V.E.2.d., by harvesting food, feed, and fiber crops from the site less than 30 days after application of domestic septage; and 30 TAC §312.42(a) and (c) and §312.43(c), and the Registration, Standard Provisions Numbers V.A.1. and V.D.4.,

by applying domestic septage at an annual application rate that is greater than the agronomic rate for the vegetation in the area on which the material is applied; PENALTY: \$7,125; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Donald R. Cole dba Blue Ridge Water System and Susan E. Cole dba Blue Ridge Water System; DOCKET NUMBER: 2018-0876-PWS-E; TCEQ ID NUMBER: RN104709860; LOCATION: 414 North Blue Jay Court near Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to report the results of cyanide sampling to the executive director (ED) for the January 1, 2015 - December 12, 2017, monitoring period; 30 TAC §§290.46(f)(4), 290.106(e), 290.107(e), 290.108(e), and 290.122(c)(2)(A) and (f), by failing to report the results for metals/minerals, synthetic organic chemical (SOC) contaminants (Methods 504 and 515), and radionuclides sampling to the ED for the January 1, 2014 - December 31, 2016, monitoring period, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to report the results of metals/minerals, SOC contaminants (Methods 504 and 515), and radionuclides sampling for the January 1, 2014 - December 31, 2016, monitoring period; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to report the results of volatile organic chemical contaminants sampling for the January 1 - December 31, 2015 and January 1 - December 31, 2016, monitoring periods, the failure to report the results of nitrate sampling for the January 1 - December 31, 2015 and January 1 - December 31, 2016, monitoring periods, and the failure to report the results of SOC contaminants (Group SOC5) sampling for the January 1, 2013 - December 31, 2015, monitoring period; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91840159 for Fiscal Years 2016 - 2018; PENALTY: \$787; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: IES Children and Family Services, Inc. fka INTERNATIONAL EDUCATIONAL SERVICES, INCORPORATED; DOCKET NUMBER: 2015-0851-MWD-E; TCEQ ID NUMBER: RN102179124; LOCATION: 2547 United States Highway 77 South, approximately two miles north of the intersection of Farm-to-Market Road 665 and United States Highway 77 near Driscoll, Nueces County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014981001, Operational Requirement Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0014981001, Operational Requirement Number 1 and Effluent Limitations and Monitoring Requirement Number 4, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; 30 TAC §305.125(1) and §319.7(a)(1), (2), (3), and (5), and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 3.c., by failing to maintain complete records of monitoring activities; 40 Code of Federal Regulations Part 136, 30 TAC §§305.125(1), 319.9(d), and 319.11(c), and TPDES Permit Number WQ0014981001, Monitoring and Reporting Requirement Number 2.a., by failing to analyze effluent samples as specified by the permit; 30 TAC §§305.125(1), 319.1, 319.4, and 319.5(a) and (b) and TPDES Permit Number WQ0014981001, Monitoring and Reporting

Requirement Number 1, by failing to collect and analyze effluent at the intervals specified in the permit; TWC, §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014981001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limits; PENALTY: \$34,607; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Jose Espinoza; DOCKET NUMBER: 2018-1134-EAQ-E; TCEQ ID NUMBER: RN110443470; LOCATION: 2555 North Interstate Highway 35, Georgetown, Williamson County; TYPE OF FACILITY: commercial property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: \$7,875; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Room 179, Austin, Texas 78753, (512) 339-2929.

(5) COMPANY: K & L DISCOUNT FOOD MART, INC.; DOCKET NUMBER: 2018-0418-PST-E; TCEQ ID NUMBER: RN102236973; LOCATION: 803 North Polk Street, Amarillo, Potter County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information to the agency regarding the USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days from the date on which the owner or operator first became aware of the change or addition; PENALTY: \$4,825; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: OGH1 ENTERPRISES, INC. dba Stop N Drive 4; DOCKET NUMBER: 2017-1617-PST-E; TCEQ ID NUMBER: RN102263548; LOCATION: 15922 Farm-to-Market 3083 Road, Conroe, Montgomery 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 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: \$2,438; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Saais Enterprises LLC dba Stop N Go in Mesquite; DOCKET NUMBER: 2017-1447-PST-E; TCEQ ID NUMBER: RN102650512; LOCATION: 1502 South Belt Line Road, Mesquite, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$3,375; STAFF ATTORNEY: John S. Merculief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: United States Department of the Air Force; DOCKET NUMBER: 2018-0658-WQ-E; TCEQ ID NUMBER: RN103177531; LOCATION: approximately 1,500 feet southeast of the intersection of Anderson Drive and Nehis Boulevard, approximately 3,500 feet north of the intersection of the State Highway 240 and Farm-to-Market Road 890, Wichita County; TYPE OF FACILITY: military base with an associated wastewater collection system; RULE VIOLATED: TWC, §26.121(a)(1), by failing to prevent an unauthorized discharge of raw sewage into or adjacent to any water in the state; SERVICE CHARGES/ADMINISTRATIVE COSTS: \$1,805.32; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

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Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 12, 2019



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 the 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 **April 22, 2019**. 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 April 22, 2019**. 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, TWC, §7.075, provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Butch Hardie; DOCKET NUMBER: 2018-0477-WOC-E; TCEQ ID NUMBER: RN110128691; LOCATION: 104 United States Highway 380, Bridgeport, Wise County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §37.003,

Texas Health and Safety Code, §341.034(b), and 30 TAC §30.5(a) and §30.381(b), by failing to obtain a valid water system operators license prior to performing process control duties in the production, treatment, and distribution of public drinking water; PENALTY: \$938; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Lucky's Redi-Mix Co. LLC; DOCKET NUMBER: 2017-1536-AIR-E; TCEQ ID NUMBER: RN106526981; LOCATION: 31 Rainbow Road, Cuero, Dewitt County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: Texas Health and Safety Code, §382.085(a) and (b) and 30 TAC §101.4, by failing to prevent dust nuisance conditions from impacting off-property receptors; PENALTY: \$2,625; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(3) COMPANY: Mark Stewart; DOCKET NUMBER: 2018-0435-PWS-E; TCEQ ID NUMBER: RN101194447; LOCATION: 563 County Road 4115 near Atlanta, Cass County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), and TCEQ Agreed Order (AO) Docket Number 2015-0526-PWS-E, Ordering Provision Numbers 2.a.iii. and 2.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.122(c)(2)(A) and (f) and TCEQ AO Docket Number 2015-0526-PWS-E, Ordering Provision Number 2.a.iii., by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a Disinfectant Level Quarterly Operating Report to the ED; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to timely report the results of nitrate and volatile organic chemical contaminants sampling; and 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and TCEQ AO Docket Number 2015-0526-PWS-E, Ordering Provision Number 2.c., by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED; PENALTY: \$2,685; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Neil William Robinson; DOCKET NUMBER: 2016-1627-MLM-E; TCEQ ID NUMBER: RN106518053; LOCATION: 18303 Farm-to-Market Road 762 near Needville, Fort Bend County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the state of Texas; and 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$3,802; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Ron C. King dba Anchor Road Mobile Home Park; DOCKET NUMBER: 2018-1481-PWS-E; TCEQ ID NUMBER: RN101204725; LOCATION: 1038 Anchor Road, Angleton, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(e) and §290.107(e), by failing to provide the results for nitrate and volatile organic chemical (VOC) contami-

nants sampling to the executive director (ED); 30 TAC §290.107(e), by failing to provide the results for synthetic organic chemical Group 5 contaminants sampling to the ED; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the notification regarding the failure to provide the results for nitrate and VOC contaminants sampling to the ED; PENALTY: \$737; STAFF ATTORNEY: Logan Harrell, Litigation Division, MC 175, (512) 239-1439; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201900791

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 12, 2019



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 22, 2019**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 22, 2019**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Devine Convenience LLC dba Super Mart; DOCKET NUMBER: 2018-0266-PST-E; TCEQ ID NUMBER: RN101856219; LOCATION: 500 West Hondo Avenue, Devine, Medina County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, B, and C; PENALTY: \$6,874; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: NAS STAR ENTERPRISES, INC. dba 909 Grocery; DOCKET NUMBER: 2018-0850-PST-E; TCEQ ID NUMBER: RN104710785; LOCATION: 14586 Farm-to-Market 1485 Road, Conroe, Montgomery County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 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); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$9,769; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201900789
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 12, 2019



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Hope C-Store Inc dba Country Corner Store: SOAH Docket No. 582-19-3338; TCEQ Docket No. 2018-1259-PWS-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - April 11, 2019
William P. Clements Building
300 West 15th Street, 4th Floor
Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's preliminary Report and Petition mailed January 4, 2019 concerning assessing administrative penalties against and requiring certain actions of HOPE C-STORE INC dba Country Corner Store, for violations in Orange County, Texas, of: 30 Texas Administrative Code §290.42(b)(1) and (e)(3), and §290.46(n)(1) and (n)(3).

The hearing will allow HOPE C-STORE INC dba Country Corner Store, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford HOPE C-STORE INC dba Country Corner Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of HOPE C-STORE INC dba Country Corner Store to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes.** HOPE C-STORE INC dba Country Corner Store, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Health & Safety Code ch. 341 and 30 Texas Administrative Code chs. 70 and 290; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Kathryn Schroeder, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at <http://www.tceq.texas.gov/goto/eFilings> or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: March 11, 2019

TRD-201900797
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 12, 2019

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General Land Office

Request for Applications for the 2020-2021 Texas General Land Office Oil Spill Prevention and Response Program for Research, Testing, and Development of Oil Discharge Prevention and Response Technology, Training, and Community Outreach

Filing Authority. The availability of funds under the Request for Applications described herein (the "RFA") is authorized by Tex. Nat. Res. Code § 40.302, and will be contingent on state appropriations for fiscal years 2020-21, September 1, 2019, to August 31, 2021.

Eligible Applicants. The General Land Office (GLO) requests applications under the RFA from State of Texas Institutions of Higher Education.

Description. The purpose of this program is for the GLO to contract with state institutions of higher education to perform research, testing, and development of oil discharge prevention and response technology, oil discharge response training, wildlife and natural resources rescue and rehabilitation, development of computer models to predict the movements and impacts of unauthorized discharges of oil, and other purposes consistent with and in furtherance of the purposes of the Oil Spill Prevention and Response Act of 1991, Tex. Nat. Res. Code Chapter 40.

Dates of Project. The program will be implemented from September 1, 2019, through August 31, 2021. Applicants should plan for a starting date of no earlier than September 1, 2019, and an ending date of no later than August 31, 2021, contingent on the continued availability of funding.

Project Amount. Approximately \$1.25 million per year will be available for projects funded through the GLO Oil Spill R&D program. It is anticipated that most successful applications will be for two-year projects. There is no match requirement under this program, however, preferential consideration will be given to applicants offering matching funds, including in-kind match. This program is funded entirely with state funds and is contingent on the GLO receiving sufficient state appropriations to carry out the program.

Selection Criteria. Applications will be evaluated through an internal, and if applicable, an external peer review process. Several criteria will be used in the review. For example, applications will be evaluated on scientific merit and soundness as well as clear and useful milestones or deliverables. The GLO will also consider the likelihood that the application will increase the capability, or improve the knowledge and technology, necessary to prevent, respond to, and clean-up spills of crude oil and petroleum products in coastal, offshore environments, marine shorelines, estuarine waters, and marshes. The clarity of the budget and capability or qualifications of the listed investigator(s) will be reviewed. This section represents a sample of criteria and not an exclusive or complete list.

The GLO is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit the GLO to pay any costs before an application is approved. The issuance of this RFA does not obligate the GLO to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The complete RFA will be posted on the GLO web page at <http://www.glo.texas.gov/coast/grant-projects/osr/index.html> for viewing and downloading.

Further Information. To ensure no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, all questions must be submitted in writing to the GLO contact persons identified in the program guidelines of the RFA at <http://www.glo.texas.gov/coast/grant-projects/osr/index.html> no later than April 12, 2019.

Deadline for Receipt of Applications. The GLO must receive applications must be received by 5:00 p.m. (Central Time), April 12, 2019, to be eligible for consideration.

TRD-201900795
Mark Havens
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: March 12, 2019

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Texas Health and Human Services Commission

Public Notice - Revised - Texas State Plan for Medical Assistance Amendments Effective January 1, 2019

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective January 1, 2019.

The purpose of the amendments is to modify the reimbursement methodology in the current state plan for the Day Activity and Health Services (DAHS), §1915(i) Home and Community-Based Services (HCBS), Nursing Facility (NF), and Primary Home Care (PHC) programs by requiring biennial rather than annual cost reports. NF providers will be required to submit cost reports every other year beginning with their 2018 cost reports, and DAHS and PHC providers will be required to submit cost reports every other year beginning with their 2019 cost reports. During interim years, NF providers who participate in the Direct Care Staff Compensation Program will be required to submit a Staffing and Compensation Report; DAHS and PHC providers who participate in the Attendant Compensation Rate Enhancement Program will be required to submit an Attendant Compensation Report.

HHSC is also making clarifying revisions to the inflation projection methodology for the DAHS, HCBS, Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID), NF, and PHC programs. A revision will also be made to the nursing wage inflation methodology, which will affect only the DAHS, HCBS, ICF/IID, and NF programs.

The proposed amendments are estimated to have no fiscal impact.

To obtain copies of the proposed amendments, interested parties may contact Beren Dutra, State Plan Coordinator, by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 428-1932; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Health and Human Services Commission.

TRD-201900803

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 13, 2019



Public Notice - Texas State Plan for Medical Assistance Amendments Effective April 1, 2019

The Texas Health and Human Services Commission (HHSC) announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective April 1, 2019.

The purpose of the amendments is to update the fee schedules in the current state plan by adjusting fees, rates, or charges for the following services:

Physicians and Other Practitioners;

Durable Medical Equipment; and

Early and Periodic Screening, Diagnosis and Treatment (EPSDT).

The proposed amendments are estimated to result in an annual aggregate expenditure of \$4,410,302 for federal fiscal year (FFY) 2019, consisting of \$2,566,355 in federal funds and \$1,843,947 in state general revenue. For FFY 2020, the estimated annual aggregate expenditure is \$4,649,438, consisting of \$2,831,043 in federal funds and \$1,818,395 in state general revenue. For FFY 2021, the estimated annual aggregate expenditure is \$4,713,659, consisting of \$2,870,147 in federal funds and \$1,843,512 in state general revenue.

Further detail on specific reimbursement rates and percentage changes is available on the HHSC Rate Analysis website under the proposed effective date at: <http://rad.hhs.texas.gov/rate-packets>.

Rate Hearing. A rate hearing was conducted on February 11, 2019, at 1:30 p.m. in Austin, Texas. Information about the proposed rate change(s) and the hearing can be found in the January 18, 2019, issue of the *Texas Register* at pages 348-349 and in the January 25, 2019, issue of the *Texas Register* at pages 447-448. These can be found at <http://www.sos.state.tx.us/texreg/index.shtml>.

Copy of Proposed Amendments. Interested parties may obtain additional information and/or a free copy of the proposed amendments by contacting Cynthia Henderson, State Plan Policy Advisor, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 487-3349; by facsimile at (512) 730-7472; or by e-mail at Medicaid_Chip_SPA_Inquiries@hhsc.state.tx.us. Copies of the proposed amendments will be available for review at the local county offices of the Texas Department of Aging and Disability Services.

Written Comments. Written comments about the proposed amendments and/or requests to review comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax, or email:

U.S. Mail Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 P.O. Box 149030 Austin, Texas 78714-9030

Overnight mail, special delivery mail, or hand delivery Texas Health and Human Services Commission Attention: Rate Analysis, Mail Code H-400 Brown-Heatly Building 4900 North Lamar Blvd Austin, Texas 78751 Phone number for package delivery: (512) 730-7401

Fax Attention: Rate Analysis at (512) 730-7475

Email RADAcuteCare@hhsc.state.tx.us

TRD-201900804
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: March 13, 2019



Texas Department of Licensing and Regulation

Notice of Vacancies on Orthotists and Prosthetists Advisory Board

The Texas Department of Licensing and Regulation (Department) announces three vacancies on the Orthotists and Prosthetists Advisory Board (Board) established by Texas Occupations Code, Chapter 605. The purpose of the Orthotists and Prosthetists Advisory Board is to provide advice and recommendations to the Department on technical matters relevant to the administration of this chapter. Service as a Board member is voluntary, and compensation is not authorized by law. This announcement is for:

- (1) one licensed orthotist who has practiced orthotics for the five years preceding the date of appointment;
- (2) one licensed prosthetist who has practiced prosthetics for the five years preceding the date of appointment; and
- (3) one member who is a representative of the public who uses an orthosis.

The Board consists of seven members appointed by the presiding officer of the Texas Commission of Licensing and Regulation (Commission), with the approval of the Commission. Members serve staggered six-year terms with the terms of two or three members expiring on February 1 of each odd-numbered year. The Board is composed of the following members:

- (1) two licensed orthotists who each have practiced orthotics for the five years preceding the date of appointment;
- (2) two licensed prosthetists who each have practiced prosthetics for the five years preceding the date of appointment;
- (3) one licensed prosthetist orthotist who has practiced orthotics and prosthetics for the five years preceding the date of appointment;
- (4) one member who is a representative of the public who uses an orthosis; and
- (5) one member who is a representative of the public who uses a prosthesis.

Interested persons should submit an application on the Department website at: <https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx>. Applicants can also request an application from the Department by telephone (800) 803-9202 or e-mail advisory.boards@tdlr.texas.gov. **These are not paid positions and there is no compensation or reimbursement for serving on the Board.**

TRD-201900777
Brian Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 8, 2019



Texas Medical Disclosure Panel

Correction of Error

The Texas Medical Disclosure Panel proposed amendments to 25 TAC §601.4 and §601.8, concerning informed consent of patients, in the February 22, 2019, issue of the *Texas Register* (44 TexReg 803). The earliest possible date of adoption was published as "March 14, 2019" on page 804, second column. The correct earliest possible date of adoption of this filing is March 24, 2019.

TRD-201900779
Noah Appel, M.D.
Chairman
Texas Medical Disclosure Panel
Filed: March 8, 2019

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Texas Department of Public Safety

Notice of Rapid DNA Pilot Project

The Department of Public Safety (DPS), through its Crime Lab, is working with the Federal Bureau of Investigation (FBI) on a Rapid DNA pilot project to test and evaluate a Rapid DNA analysis booking communications infrastructure. The FBI is developing interfaces so booking stations can communicate with the Combined DNA Index System (CODIS).

DPS is working with two known vendors (Ande and Thermo Fisher) to contribute devices, consumables, test samples, and training and support to DPS for the purposes of participation in this FBI pilot. DPS will keep the devices for a maximum of 150 days, after which DPS will return the given devices and unused consumables. If you have any comments, please contact Heather Greco at Heather.Greco@dps.texas.gov.

TRD-201900800
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: March 13, 2019

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Teacher Retirement System of Texas

Award Notice - TRS Contract CC-1900023

Per Texas Government Code §2254.030, the Teacher Retirement System of Texas (TRS) announces this notice of award of a consulting services contract for Secondary Broker/Intermediary services, to Greenhill & Co., LLC, 2101 Cedar Springs Rd., Suite 1200, Dallas, Texas 75201. The consultant will assist TRS' Investment Management Division with facilitation of the sale process for a portion of TRS' Private Equity and External Private Markets portfolios. The term of the contract is February 15, 2019, through an estimated end date of February 15, 2020, with actual contract termination tied to the closing of the transaction(s). The estimated contract total is \$2,000,000.00.

TRD-201900771
Brian Guthrie
Executive Director
Teacher Retirement System of Texas
Filed: March 6, 2019

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Texas Department of Transportation

Aviation Division - Request for Qualifications (RFQ) for Professional Engineering Services

The City of Brenham, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a professional engineering

firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for the current aviation project as described below:

Current Project: City of Brenham; TxDOT CSJ No.: 1917BRENM.

The TxDOT Project Manager is Steve Harp, P.E.

Scope: Provide engineering and design services, including construction administration, to reconstruct and mark a section of Runway 16-34 to eliminate a bump in the pavement.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises (DBE).

The DBE goal for the design phase of the current project is 0%. The goal will be re-set for the construction phase.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Brenham Municipal Airport may include the following:

Rehabilitate remaining north and south portions of Runway 16-34, rehabilitate parallel taxiway, and rehabilitate apron.

The City of Brenham reserves the right to determine which of the services listed above may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services listed above.

To assist in your qualification statement preparation, the criteria, project diagram, and most recent Airport Layout Plan are available online at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm> by selecting "Brenham Municipal Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects.

AVN-550 Preparation Instructions:

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, (800) 68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html>. The form may not be altered in any way. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight pages of data plus one optional illustration page. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, or submits a cover page with the AVN-550, that provider will be disqualified. Responses to this solicitation WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

The completed Form AVN-550 must be received in the TxDOT Aviation eGrants system no later than April 23, 2019, 11:59 p.m. (CDST). Electronic facsimiles or forms sent by email or regular/overnight mail will not be accepted.

Firms that wish to submit a response to this solicitation must be a user in the TxDOT Aviation eGrants system no later than one business day before the solicitation due date. To request access to eGrants, please complete the Contact Us web form located at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

An instructional video on how to respond to a solicitation in eGrants is available at <http://txdot.gov/government/funding/egrants-2016/aviation.html>.

Step by step instructions on how to respond to a solicitation in eGrants will also be posted in the RFQ packet at <http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm>.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at <http://www.txdot.gov/inside-txdot/division/aviation/projects.html> under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at (800) 68-PILOT (74568). For procedural questions, please contact Sheri Quinlan, Grant Manager. For technical questions, please contact Steve Harp, Project Manager.

For questions regarding responding to this solicitation in eGrants, please contact the TxDOT Aviation help desk at (800) 687-4568 or avn-egrantshelp@txdot.gov.

TRD-201900774
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 7, 2019



Request for Safe Routes to School Proposals - Traffic Safety Program

Authority and responsibility for management of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23

USC §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Traffic Safety Division, Behavioral Traffic Safety Section (TRF-BTS) provides oversight of statewide projects and local safety projects at the agency's 25 districts. TRF-BTS will administer the Safe Routes to School (SRTS) program from its Austin headquarters in the Traffic Safety Division (TSD).

The Federal-aid SRTS Program was created by Section 1404 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users Act (SAFETEA-LU), signed into Public Law (P.L. 109-59) on August 10, 2005. The SRTS Program provides Federal highway funds to State Departments of Transportation in accordance with a formula specified in the legislation. These funds are available for non-infrastructure projects, and to administer State SRTS Programs that benefit elementary and middle school children in grades K-8. The Federal-aid SRTS Program is administered by the Federal Highway Administration (FHWA) Office of Safety.

The following is information related to the FY 2019-2021 Safe Routes to School (SRTS) Grants -Request for Proposals (RFP). Please review the full FY 2019-2021 RFP located online at:

<https://www.txdot.gov/apps/eGrants/eGrantsHelp/SRTS/rfp.html>

Proposals for Safe Routes to School funding consideration are due to TRF-BTS no later than 5:00 p.m. CST, Monday, April 22, 2019.

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by 5:00 p.m. CST, Wednesday, April 3, 2019. A list of the questions with answers (Q&A document) will be posted at: <https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html> by 5:00 p.m. CST, on Wednesday, April 10, 2019.

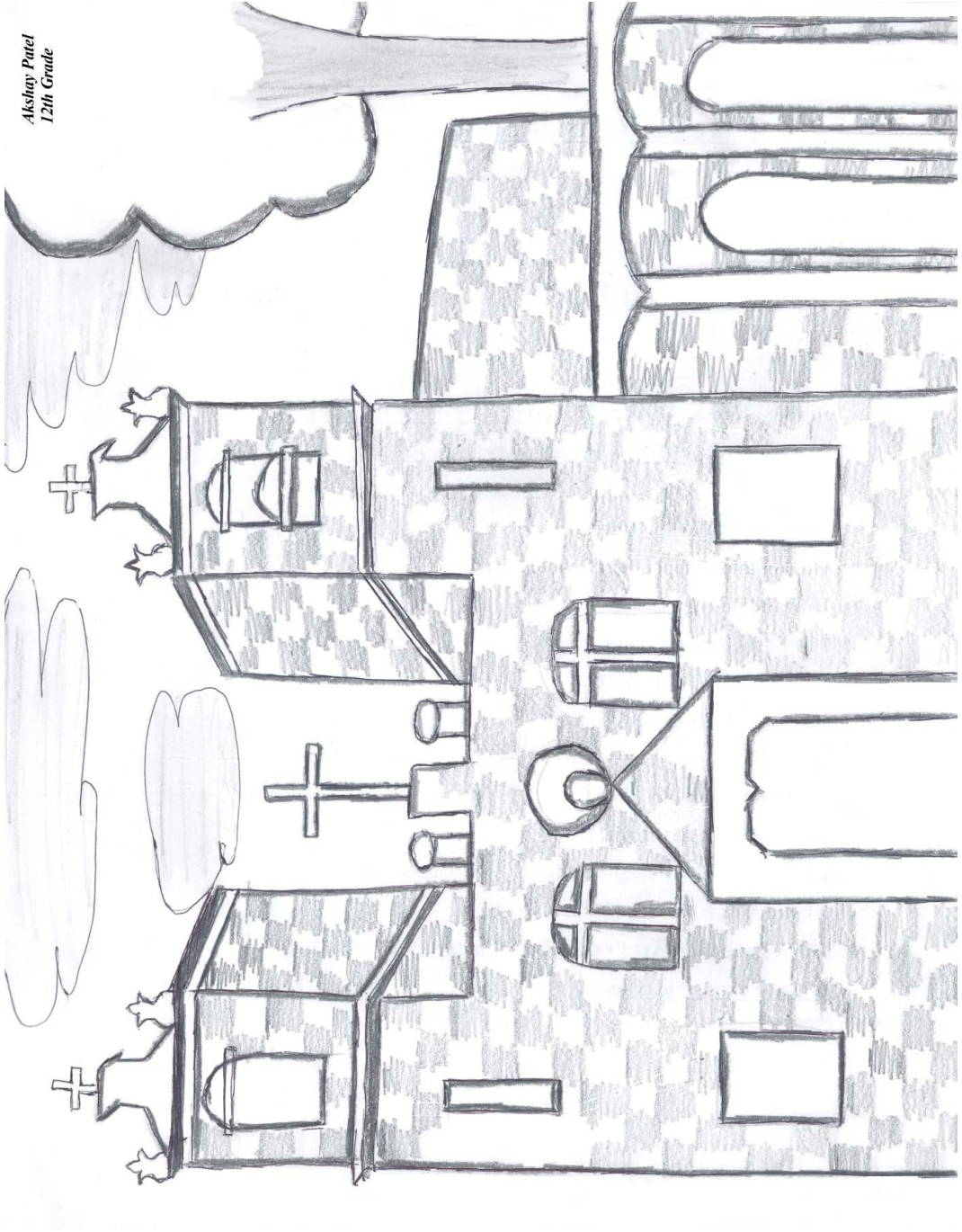
A webinar on Safe Routes to School proposal submissions via the Traffic Safety eGrants system will be hosted by the TRF-BTS Austin headquarters staff. The webinar will be conducted on Tuesday, March 26, 2019, from 9:00 a.m. to 12:00 p.m. CST. For access information please go to <https://www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html>.

The proposals must be completed using eGrants, which can be found by going to www.txdot.gov/apps/egrants.

TRD-201900787
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: March 11, 2019



Aksfay Patel
12th Grade



How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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