TEXAS REGISTER

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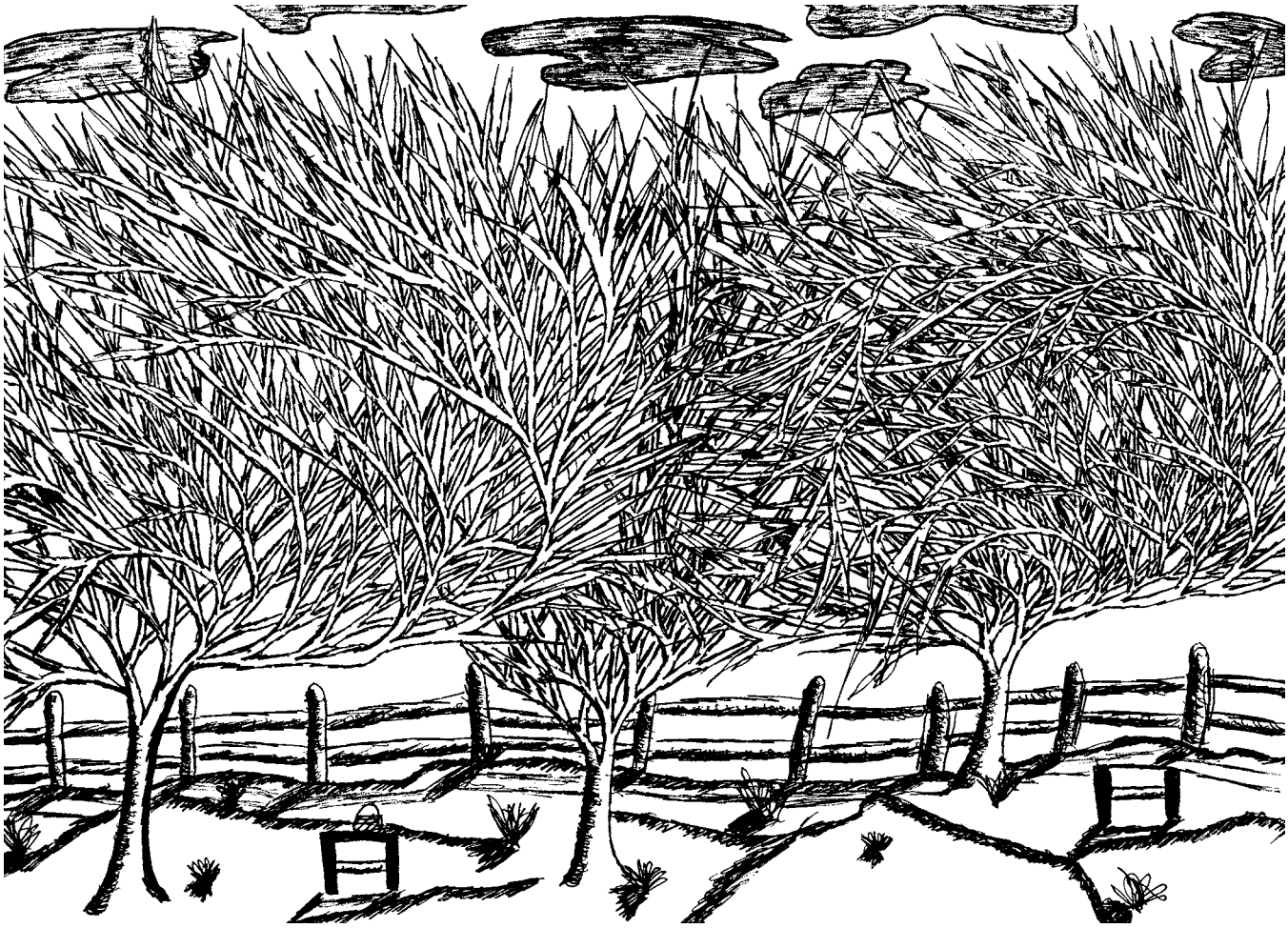

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

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

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

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

THE GOVERNOR

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

Budget Execution Proposal

Pursuant to Texas Government Code §317.002, I make the following budget execution proposal.

I find that the following constitute an emergency:

Insufficient budget authority at the Texas Military Department, Texas Department of Public Safety, and Texas Parks and Wildlife Department to assist the Texas Department of Public Safety to secure the Texas-Mexico border.

I therefore propose that:

1. From appropriations made to the Office of the Governor, Trusteed Programs in Senate Bill 1, 83rd Legislature, Regular Session, 2013, Strategy A.1.2, Disaster Funds, the amount of $10,000,000 in General Revenue appropriated for fiscal year 2015 be transferred to the Texas Military Department, Strategy A.1.1 State Active Duty-Disaster for the purpose of assisting the Texas Department of Public Safety in border security operations.

2. From appropriations made to the Texas Department of Transportation in Senate Bill 1, 83rd Legislature, Regular Session, 2013, Strategy G.1.1 General Obligation Bonds, the amount of $47,900,000 in General Revenue appropriated for the fiscal year 2015 be transferred to the Texas Department of Public Safety, Strategy A.1.4, Local Border Security for the purpose of increasing the department's border security operations, including overtime pay.

3. From appropriations made to the Texas Public Finance Authority in Senate Bill 1, 83rd Legislature, Regular Session, 2013, end of article appropriations, Articles I, II, III, V, VI, VII, Bond Debt Service Payments, Strategy A.1.1 Bond Debt Service, the amount of $7,500,000 in General Revenue appropriated for fiscal year 2015 be transferred to the Texas Military Department, Strategy A.1.1 State Active Duty-Disaster for the purpose of assisting the Texas Department of Public Safety in border security operations.

4. From appropriations made to the Texas Public Finance Authority Senate Bill 1, 83rd Legislature, Regular Session, 2013, end of article appropriations, Article I, II, III, V, VI, VII, Bond Debt Service Payments, Strategy A.1.1 Bond Debt Service, the amount of $10,000,000 in General Revenue appropriated for fiscal year 2015 be transferred to the Texas Department of Public Safety, Strategy A.1.4 Local Border Security for the purpose of increasing the department's border security operations, including overtime pay and capital equipment.

5. From appropriations made to the Office of the Governor, Trusteed Programs in Senate Bill 1, 83rd Legislature, Regular Session, 2013 Strategy A.1.12 Texas Emerging Technology Fund, the amount of $7,000,000 in General Revenue-Dedicated Emerging Technology Fund Account No. 5124 appropriated for the 2014-15 biennium be transferred to the Texas Department of Public Safety, Strategy A.1.4 Local Border Security for the purpose of increasing the department's border security operations including capital equipment.

6. From appropriations made to the Office of the Governor, Trusteed Programs in Senate Bill 1, 83rd Legislature Regular Session 2013, Strategy A.1.2 Disaster Funds, the amount of $3,744,000 in General Revenue appropriations for fiscal year 2015 be transferred to the Texas Parks and Wildlife Department, Strategy C.1.1, Enforcement Programs for the purpose of assisting the Texas Department of Public Safety in border security operations.

I hereby certify that this proposal has been reviewed by legal counsel and found to be within my authority.

Issued in Austin, Texas on November 17, 2014.

Rick Perry, Governor

David Dewhurst, Lieutenant Governor

Joe Straus, Speaker of the House

TRD-201405478

♦ ♦ ♦


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75
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Sergio Ledesma

THE ATTORNEY GENERAL

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

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

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

Opinions

Opinion No. GA-1085

The Honorable Craig Watkins

Dallas County District Attorney

Frank Crowley Courts Building

133 North Riverfront Boulevard, LB 19

Dallas, Texas 75207

Re: Authority of the Dallas County Juvenile Board to hire an attorney as in-house counsel (RQ-1198-GA)

S U M M A R Y

A court would likely conclude that the Dallas County Juvenile Board may hire an attorney as a full-time employee to provide in-house legal services if the Board determines that the position is necessary to fulfill its legislative mandate to provide juvenile probation services.

Opinion No. GA-1086

The Honorable Randall C. Sims

District Attorney

47th Judicial District of Texas

Potter County Courts Building

501 South Fillmore, Suite 5A

Amarillo, Texas 79101-2449

Re: Authority of an entity to require and maintain a photocopy of the credentials of a person covered by section 552.1175 of the Government Code (RQ-1199-GA)

S U M M A R Y

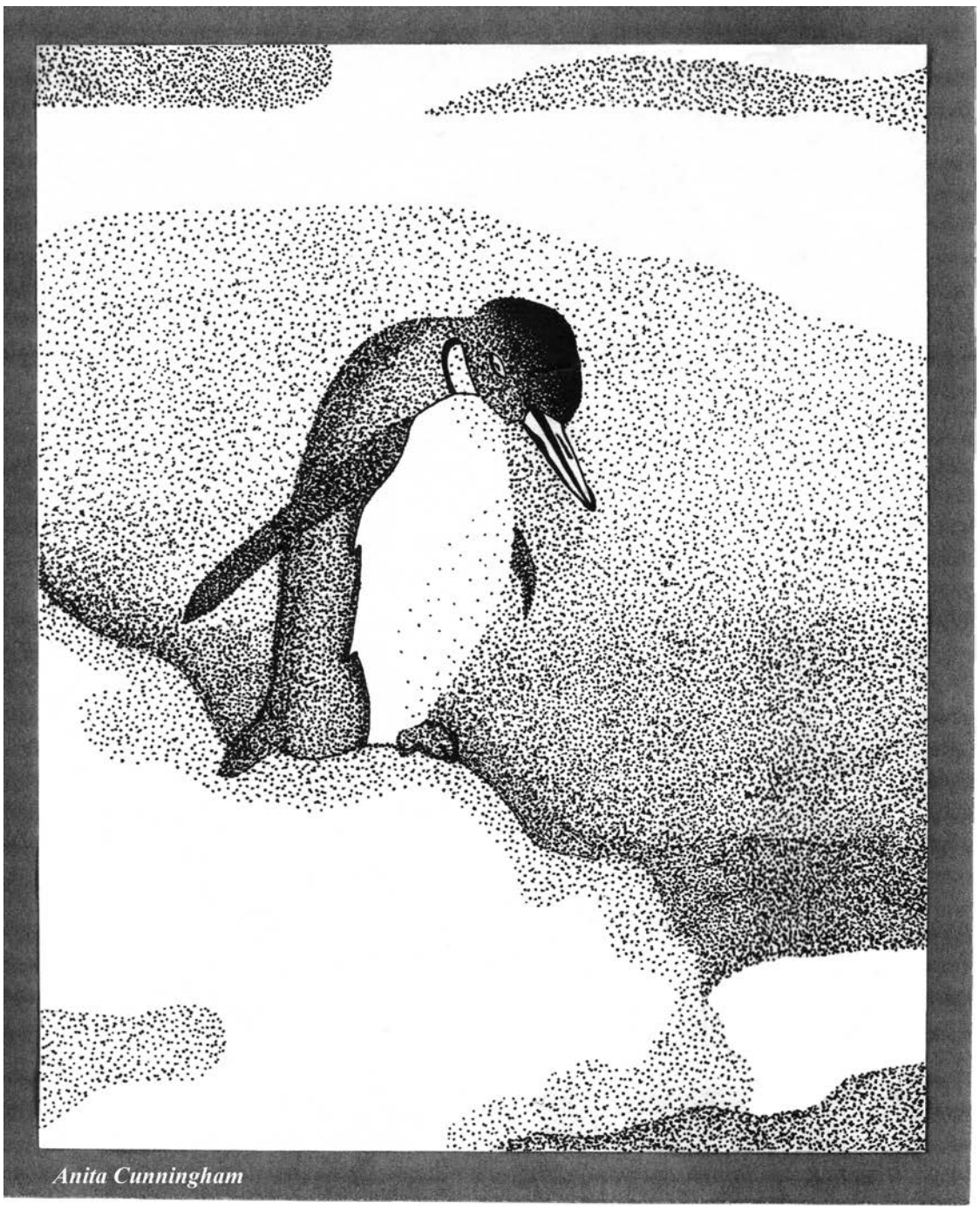
Subsection 552.1175(b) of the Government Code neither requires nor prohibits a governmental entity from photocopying the evidence that verifies a person's employment status as a current or former law enforcement individual under subsection 552.1175(a).

No source of law prohibits a governmental body that chooses to photocopy the evidence of an individual's status submitted pursuant to section 552.1175 from retaining the copies. Such materials are likely subject to exceptions from public disclosure under the Public Information Act. Subsection 552.139(b)(3) of the Government Code provides that "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential and may not be released.

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

TRD-201405395
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 12, 2014

♦ ♦ ♦



Anita Cunningham

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER V. MEXICAN FRUIT FLY QUARANTINE

4 TAC §§19.500 - 19.509

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §§19.500 - 19.509 for a 60-day period. The text of the new sections was originally published in the August 1, 2014, issue of the *Texas Register* (39 TexReg 5841).

Filed with the Office of the Secretary of State on November 10, 2014.

TRD-201405370
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Original effective date: July 16, 2014
Expiration date: January 11, 2015
For further information, please call: (512) 463-4075

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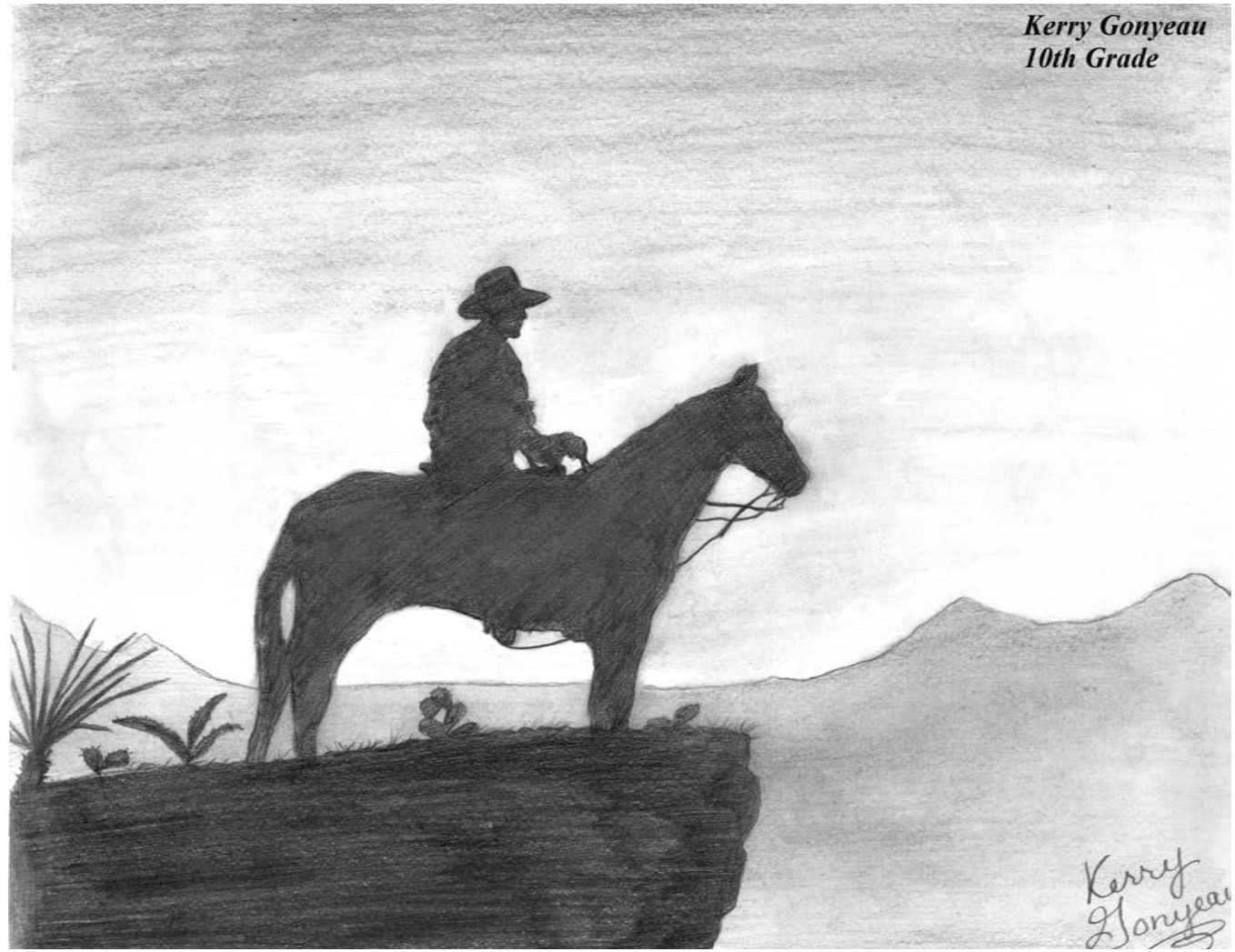
Kerry Gonyeau
10th Grade
Kerry Gonyeau

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER K. MAINTENANCE PROGRAM

4 TAC §§3.700 - 3.705

The Texas Department of Agriculture (department), upon the request and recommendation of the Texas Boll Weevil Eradication Foundation (Foundation), proposes new 4 TAC Chapter 3, Subchapter K, §§3.700 - 3.705, concerning the implementation and operation of a boll weevil eradication maintenance program to be conducted in an area known as the West Texas Maintenance Area.

Cotton growers, in partnership with the state and federal governments, have made significant investments and progress toward the eradication of boll weevils and pink bollworms in this state. Texas Agriculture Code, Chapter 74, Subchapter F (Subchapter F) provides the department with the authority to establish rules to fund and implement a statewide maintenance program, upon the request of the Foundation, for boll weevil and pink bollworm eradication to eliminate any potential areas of unexpected infestation once a zone has been declared functionally eradicated and the Foundation ceases to collect the grower assessment in a zone. An existing eradication zone is eligible for inclusion in a maintenance area if the commissioner determines that the boll weevil has been functionally eradicated in that zone, no debt is owed to the foundation by the zone and the grower steering committee for the zone has been consulted regarding inclusion of the zone in a maintenance area. Such a determination has been made for counties proposed to be included in the West Texas Maintenance Area. The new sections are necessary to establish the West Texas Maintenance Area, impose a per-bale maintenance fee on all cotton grown in the West Texas Maintenance Area, and to establish the method, manner, and mechanism by which maintenance fees are collected for the boll weevil eradication maintenance program, as provided for in Subchapter F.

The new sections provide definitions, establish the West Texas Maintenance Area and the maximum maintenance fee to be paid by producers in the maintenance area, provide procedures for collecting maintenance fees, and provide for penalties and remedies for violations of the sections. The new sections were developed with recommendations made by the Foundation and cotton grower steering committees in affected boll weevil eradication zones.

David Kostroun, chief administrator for agriculture and consumer protection, has determined that for the first five years the new sections are in effect, there will be no anticipated costs to state or local government, because any costs incurred will be covered by the Foundation from maintenance fees. Maintenance fees are paid to the Foundation and are not state revenue.

Mr. Kostroun has also determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of administering and enforcing the new sections will be to provide for the continued protection of the cotton industry from the boll weevil and pink bollworm. There is an anticipated cost to individuals, microbusinesses and small businesses (cotton producers) required to comply with the new sections. The anticipated economic cost to cotton producers will be the cost of the maintenance fee, not to exceed $1.50 per bale, which is based on the quantity of cotton sold by the producer. The maintenance fee will replace the current assessment on cotton producers, and in some cases will result in a cotton grower paying less than the current assessment. There may also be a cost to central collection points of cotton in order to comply with collection requirements in new §3.504. It is not possible to determine the central collection points' costs, if any, at this time.

Comments on the proposal may be submitted to David Kostroun, Chief Administrator for Agriculture and Consumer Protection, P.O. Box 12847, Austin, Texas 78711-2847. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

New Subchapter K, §§3.700 - 3.705, is proposed under Texas Agriculture Code, §74.204, which provides the department with the authority to adopt rules to implement and operate a boll weevil maintenance program under the Code.

The code provisions affected by the proposal are the Texas Agriculture Code, Chapter 74, Subchapter F.

§3.700. Definitions.

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

(1) Board--The board of directors of the Texas Boll Weevil Eradication Foundation, Inc.

(2) Boll weevil--The meaning assigned by Texas Agriculture Code, §74.002.

(3) Central collection point--All cotton warehouses, cotton compresses, and other venues collecting harvested and ginned cotton that was produced within a maintenance area, as described and defined in these rules. "Central collection point" shall include a cotton gin only when:

(A) the cotton in question ships directly from the gin to a user or exporter of cotton, and is not stored at a domestic warehouse or compress, and then only for those bales that ship directly; or

(B) when a cotton gin agrees to serve as a central collection point.

(4) Commissioner--The Commissioner of agriculture.

(5) Foundation--The Texas Boll Weevil Eradication Foundation, Inc., a Texas nonprofit corporation.

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

§3.701. Authority and Purpose.

The Texas Agriculture Code, §74.202 provides the commissioner of agriculture with the authority, by rule, to designate boll weevil and pink bollworm eradication maintenance areas for the continued protection of the cotton industry.

§3.702. West Texas Maintenance Area.

(a) The West Texas Maintenance Area shall consist of the following eleven (11) existing contiguous eradication zones: El Paso/Trans Pecos, Northern Rolling Plains, Northwest Plains, Panhandle, Permian Basin, Rolling Plains Central, Southern High Plains/Caprock, Southern Rolling Plains, Northern High Plains, St. Lawrence, and Western High Plains,

(b) In each of the eleven (11) existing contiguous eradication zones listed in subsection (a) of this section, the commissioner has determined that:

(1) the boll weevil has been functionally eradicated;

(2) the zone has satisfied any debt owed to the Foundation;

(3) the cotton grower steering for each zone was consulted by the Foundation regarding the inclusion of the zone in the West Texas maintenance area; and

(4) the Foundation board has requested that each zone be included in the West Texas maintenance area.

(c) In order to support eradication efforts and to prevent re-infestation in the eleven (11) eradication zones listed in subsection (a) of this section, the following seven (7) additional counties, contiguous to the existing eradication zones within the West Texas Maintenance Area, but not previously included in an eradication zone, are included in the West Texas Maintenance Area: Sterling, Sutton, Edwards, Bandera, Real, Kimble, and Kerr.

§3.703. West Texas Maintenance Area - Maintenance Fees.

(a) A maximum per-bale maintenance fee shall be assessed on all cotton grown in the West Texas Maintenance Area. The fee shall be set by the Commissioner on an annual basis and shall be in an amount up to a maximum of $1.50 per bale.

(b) The Board shall submit an annual recommendation to the Commissioner by March 15 regarding the maintenance fee to be used each crop year. Each year, prior to submitting its recommendation to the Commissioner, the Board shall consult with the cotton grower steering committees within the West Texas Maintenance Area to develop a maintenance fee recommendation to submit to the Commissioner.

(c) The Board shall consider the following factors, as applied to the West Texas Maintenance Area, when determining the annual maintenance fee recommendation:

(1) number of cotton acres;

(2) potential for reinfestation;

(3) the length of the growing season;

(4) epidemiology;

(5) historical weather conditions;

(6) expected costs of maintenance program; and

(7) need for an adequate reserve to respond to potential re-infestations in a rapid, effective manner.

(d) The Commissioner shall consider the Board's recommendation, and may accept, reject or modify the Board's recommendation.

(e) The Commissioner shall set the annual per-bale maintenance fee by April 1 each year.

(f) The Board shall provide the information regarding the current crop year's fee to the central collection points described in §3.704 of this subchapter (relating to West Texas Maintenance Area - Collection of Maintenance Fees) by certified mail including the duty to collect the maintenance fee, the amount of the annual fee, and instructions regarding the remittance of the fee to the Foundation.

§3.704. West Texas Maintenance Area - Collection of Maintenance Fees.

(a) All central collection points receiving and shipping cotton produced in the West Texas Maintenance Area shall collect the per-bale maintenance fee on all cotton produced in the area, beginning upon receipt of the notifications from the Commissioner and the Foundation, and continuing until such time as the Commissioner gives notice otherwise.

(b) Beginning on the effective date of this subchapter and continuing for each year thereafter, until such time as the Commissioner gives notice otherwise, the central collection points shall forward all West Texas Maintenance Area maintenance fees to the Foundation, for cotton grown in the year 2015 or later, on the following schedule:

(1) for all cotton that is sold and shipped by February 15, and not previously submitted and reported, submit to the Foundation by March 1;

(2) for all cotton that is sold and shipped by May 15, and not previously submitted and reported, submit to the Foundation by June 1; and

(3) for all cotton that is sold and shipped by September 15, and not previously submitted and reported, submit to the Foundation by October 1.

(c) Each central collection point shall submit a report with each maintenance fee submission listing all West Texas Maintenance Area cotton received and shipped and the maintenance fees and remitted from such cotton proceeds, on a form promulgated by the Foundation.

(d) In the event a central collection point collects and remits a maintenance fee on cotton that was produced outside of the West Texas Maintenance Area, and the cotton producer from whom the fee was collected submits a refund request, along with documentation demonstrating that the cotton was not produced in the West Texas Maintenance Area, to the Foundation, the Foundation shall issue a maintenance fee refund to such cotton producer.

(e) Maintenance fees collected and received by the Foundation are not state funds.

§3.705. Penalty and Remedies.

A violation of this subchapter is subject to an administrative penalty not to exceed $5,000 per violation, as prescribed in §12.020 of the Texas

Agriculture Code. Each day a violation continues may be considered a separate violation for purposes of a penalty assessment.

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 November 10, 2014.

TRD-201405375
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-4075

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CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (department) proposes amendments to Title 4, Part 1, Chapter 7, Subchapter A, §7.1, concerning general provisions; Subchapter C, §§7.21, 7.24, and 7.27, concerning licensing; and Subchapter D §§7.30, 7.32, 7.33, and 7.35, concerning use and application of pesticides.

The amendment to Subchapter A, §7.1, is proposed to update the definition of the term "Extension" The amendments to Subchapter C are proposed to update references, rename and define certain pesticide categories to provide clarification, and clarify points associated with continuing education unit accreditation, recordkeeping, and responsibilities required for certification, recertification and licensing of pesticide applicators. The amendments to Subchapter D renumber the existing list of State-Limited-Use pesticides and clarify that the list is defined by active ingredient, add a list of pesticides that have been cancelled by the U.S. Environmental Protection Agency (EPA) for distribution, however EPA did not include a discontinuation of use date, add a section to classify specific methods of use of pesticides for public health purposes as State Limited Use, revise recordkeeping requirements for pesticide dealers and pesticide applicators, remove the requirement for the department to issue identification decals to pesticide application equipment, and reiterate the department's authority to issue a stop use, stop distribution or removal order for faulty pesticide application equipment. In addition, the amendment to §7.21(b)(1) provides that private applicators will be charged a test fee of $52 for retesting. The fee is established in order to recover the testing cost, in accordance with Texas Agriculture Code, §12.0144, and Senate Bill 1, General Appropriations Act, Article VI, Rider 16, 83rd Regular Session, 2013, which provide that the department shall set fees in an amount which offsets the direct and indirect state costs of administering its pesticide programs.

Randy Rivera, Administrator for Agriculture Protection and Certification, has determined for the first five years the amended sections are in effect, there will be fiscal implications for state government as a result of administering or enforcing the proposed amendments. An annual increase in revenue of approximately $5,200 will be generated by private applicator retesting fees. There will be no fiscal impact for local government as a result of administering or enforcing the proposed amendments.

Mr. Rivera has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit to Texans anticipated as a result of administering the proposed amendments will be to add clarity and protective measures for responsible pesticide use and distribution. The costs associated with the amendments will be an exam fee of $52 for microbusinesses and small businesses. This cost will be incurred by those applicators seeking to retake certification exams. These fees are necessary for cost recovery of examination fees to administer the program.

Comments on the proposal may be submitted to Randy Rivera, Administrator, Agriculture and Consumer Protection Division, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or Randy.Rivera@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL

4 TAC §7.1

The amendment to §7.1 is proposed pursuant to the Texas Agriculture Code, §76.004, which provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76, including rules providing for the collection, examination, and reporting of records, devices, and samples of pesticides.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.1. Definitions.

In addition to the definitions set out in the Code, §76.001, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Extension--Texas A&M AgriLife [~~Agricultural~~] Extension Service.

(11) - (21) (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 November 4, 2014, 2014.

TRD-201405248
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-4075

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SUBCHAPTER C. LICENSING

4 TAC §§7.21, 7.24, 7.27

The amendments to §§7.21, 7.24, and 7.27 are proposed pursuant to the Texas Agriculture Code, §76.004, which provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76, including rules providing for the collection, examination, and reporting of records, devices, and samples of pesticides; §76.106, which provides the department with the authority to set and collect a fee for private applicator testing; and §76.107, which provides the department to adopt rules for testing and licensing of pesticide applicators and for use and application of pesticides.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.21. Applicator Certification.

(a) Certification of Applicators. The department may certify pesticide applicator licensees and applicants for a license [~~applicators~~] in the following license use categories and subcategories. An individual who is certified in a particular category is authorized to purchase, apply, or supervise the use of restricted use pesticides, state limited use pesticides or regulated herbicides described by that category subject to agency orders, Chapter 76 of the Texas Agriculture Code and federal law.[~~:~~]

(1) agricultural pest control: pesticide applications made to agricultural land as specified in the following subcategories:

(A) field crop: to control insects, diseases, weeds, or other pests of field crops, or the use of harvest aid pesticides in the production of field crops such as cotton, grains, oilseed crops, crops grown for seed, or crops harvested for animal feed (hay) or forage. This category does not include pesticide applications covered in category 1D (vertebrate control) or category 11 (soil fumigants) [~~pest control~~];

(B) fruit, nut and vegetable: to control insects, diseases, weeds, or other pests, or the use of harvest aid pesticides, in the production of non-citrus fruit (category 1G Citrus Pest Control), nut and vegetable crops. This category does not include pesticide applications covered in category 1D (vertebrate control) or category 11 (soil fumigants) [~~pest control~~];

(C) [~~weed and brush control in~~] pasture and rangeland: to control insects, diseases, weeds, or other pests of field crops, agricultural pastures, rangeland, or adjacent riparian or natural areas, and may include applications to pasture or rangeland vegetation that is harvested for animal feed (hay). This category does not include pesticide applications covered in category 1D (vertebrate pest) or category 11 (soil fumigants);

(D) vertebrate pest: to control vertebrate pests affecting agricultural production of field, fruit, nut or vegetable crops, in turf, pastures, rangeland, riparian or natural areas, rights of ways, parks, or crops/vegetation to be harvested for animal feed. This category does not include the use of a sodium cyanide M-44 device (category 1I) or Compound 1080 Livestock Protection Collar (category 1H). Certification in this category requires prequalification as determined by the department [~~predatory animal control~~];

(E) farm commodity pest control: to apply pesticides (including commodity fumigants) to stored raw agricultural commodities on the farm, in a public or private confined storage facility or container, in an open storage platform or vehicle, or to agricultural equipment used to transport raw agricultural commodities, to control pests of a stored agricultural product or a pest subject to a state or federal quarantine requirement [~~farm storage pest control and fumigation~~];

(F) animal health: to control external parasites or pests of agricultural animals including applications of pesticides to, in, or on any area, facility, or vehicle used for the housing, maintenance, or transportation of an agricultural animal [~~pest control~~];

(G) citrus: to control insects, diseases, weeds, or other pests in the production of citrus plants or citrus fruit. This category does not include the pesticide applications covered in category 1D (vertebrate control) or category 11 (soil fumigants) [~~pest control~~];

(H) livestock protection collar: for the use of a livestock protection collar containing sodium fluoroacetate (Compound 1080) for predator control in the protection of livestock. Specialized training provided by the department is a prerequisite for this category [~~application~~]; [~~and~~]

(I) M-44 device: for the use of a M-44 device for the control of wild or feral canids in the protection of livestock. Specialized training provided by the department is a prerequisite for this category [~~(Sodium Cyanide application in accordance with §7.40 of this title (relating to M-44 Sodium Cyanide - State-Limited-Use Requirements))~~];

(2) forest pest control: to apply pesticides in forests, forest nurseries and forest seed production;

(3) lawn and ornamental plant [~~and turf~~] pest control [~~(except as provided in subsection (c)(2) of this section)~~]; and

(A) landscape maintenance: to control pests in the establishment or maintenance of lawns or ornamental plants grown for function or aesthetic purposes in landscapes, such as athletic fields, residential properties, industrial sites, golf courses, parks, and cemeteries. This category does not include the pesticide applications covered in category 1D (vertebrate control) or category 11 (soil fumigants) [~~plant pest and weed control~~]; and

(B) nursery plant production: to control pests in the production of ornamental plants or other nursery stock and commercial turf. This category includes plants in field production, greenhouses, shade houses, or similar structures. This category does not include pesticide applications covered in category 1D (vertebrate control) or category 11 (soil fumigants) [~~greenhouse pest control~~];

(4) seed treatment: to control pests by treating seed prior to distribution or planting. This category is not required for planter box applications if the applicator is certified in the appropriate agricultural category or is a private applicator [~~treatments~~];

(5) vegetation management: to control unwanted plant growth in rights-of-way, in the maintenance of roads, parking lots, utility lines, wind generator sites, pipelines, railways, airports, public surface drainways and ditches, industrial sites including oil field sites, adjacent riparian or natural areas and includes public sewer root control [~~right-of-way pest control~~];

(6) aquatic: to control aquatic weeds or other aquatic pests including aquatic animals, microbes or other pests and may include pesticide applications to adjacent riparian or natural areas when water is present. Does not include public health pest control (vector control) category 12; [~~pest control:~~]

[~~(A) aquatic plant and animal pest control; and~~]

[~~(B) anti-fouling paint;~~]

(7) demonstration and research: for demonstration or research purposes when using restricted use pesticides, numbered compounds, any pesticide not registered by U.S. Environmental Protection Agency (unless exempt from registration under FIFRA Section 25(b)), or any pesticide used in a manner inconsistent with the label directions. No additional categories required;

(8) regulatory pest control: for applications of pesticides when implementing a regulatory program such as a plant pest quarantine, invasive weed control, or other regulated activity conducted by a state, federal or other political subdivision. This category does not include pest control category 12 (public health pest control (vector control));

(9) aerial application: The use of a pesticide applied by aircraft to any crop or site. In addition to certification in this category, certification in one or more of the appropriate use categories is required;

(10) category unassigned; [~~chemigation;~~ ~~and~~]

(11) soil fumigation: to apply fumigant pesticides to soil environments. This category is available for all pesticide license types and meets the pesticide product label requirement for EPA approved soil fumigant training. Private applicators may apply soil fumigant pesticides without adding this category, however additional EPA approved training stipulated on the use directions of a soil fumigant pesticide label must be met; and [~~chlorine gas.~~]

(12) public health pest control (vector control); for pesticide applications made for the purpose of treating, repelling, mitigating, or otherwise controlling any non-human organism that is, or may be, a vector of human disease by a pesticide applicator who is an employee of, or an independent contractor for, a federal, state, county, city, mosquito or vector control district or other political subdivision, or a person working under the direct supervision of a pesticide applicator who is an employee of, or an independent contract for, a federal, state, county, city, mosquito or vector control district or other political subdivision.

(b) Private Applicators.

(1) Producers of agricultural commodities who complete an Extension or other department approved training program for private applicators and obtain a passing score on the private applicator test may be certified in each of the categories and subcategories listed in subsection (a)(1)(A)-(G), (2), (3), (4), (6)[~~(A)~~], and (10) of this section. A private applicator may be certified as an aerial applicator by obtaining a passing score on the aerial applicator category test. Private applicators will [~~not~~] be charged a test fee of $52 for retesting. The fee will not be in excess of expenses directly related to recovery of costs for administration of examinations.

(2) - (12) (No change.)

[~~(c) Commercial and Noncommercial Applicators.~~]

[~~(1) Commercial and noncommercial applicators certified in category (a)(7)-(10) of this section must also be certified in one or more categories from category (a)(1)-(6) of this section prior to performing regulatory pest control or research and demonstration pest control.~~]

[~~(2) A person exempted from licensing requirements pursuant to the Structural Pest Control Act (Vernon's Texas Civil Statutes, Article 135b-6), §11(2) and (6) must be licensed with the department regardless of the use classification of the pesticide.~~]

§7.24. Applicator Recertification.

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

(d) The department shall assign [~~no more than~~] one continuing education unit (CEU) for each 50 minutes [~~hour~~] of net actual instruction time presented at an approved activity. Accreditation will consist of no less than one CEU for any given course or session. Accreditation in 1/2 CEUs may be allowed as determined by the department.

(e) - (n) (No change.)

(o) Sponsors of approved activities shall:

(1) prepare a roster of applicators who complete [~~that attend~~] the activity which contains, at a minimum, the date, course number, number and type of accredited CEU(s), the pesticide applicator's name and current license or certificate number, the name and contact information of the course provider, and the location of the training;

(2) distribute a completion certificate at the time of the activity to applicators who successfully complete an activity, which shall indicate the name of the sponsor, the date, county and name of the activity, the amount and type of credit earned, and the assigned course number;

(3) provide [~~send~~] the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or department approved format; [~~and~~]

(4) ensure that CEUs awarded correspond proportionately to the net instruction time; and[~~.~~]

(5) maintain activity rosters for a period of 2 years from the date of activity. Rosters are to be made available to the department upon request.

(p) Sponsors of approved correspondence activities shall:

(1) prepare a roster of applicators who complete the activity which contains, at a minimum, the date, course number, number and type of accredited CEU(s), the pesticide applicator's name and current license or certificate number, the name and contact information of the course provider, and the location of the training;

(2) (No change.)

(3) provide [~~send~~] the activity rosters to the department within 14 days after the end of an activity. The rosters must be on department forms or in a department approved format;

(4) ensure that CEUs awarded correspond proportionately to the net instruction time; [~~and~~]

(5) ensure the establishment of procedures to prohibit an individual from repeating the sponsor's course in two consecutive recertification periods; and[~~.~~]

(6) maintain activity rosters for a period of 2 years from the date of activity. Rosters are to be made available to the department upon request.

(q) - (r) (No change.)

(s) Applicators will recertify through a self-certification program. Each applicator will be required to maintain proof of the number of CEUs necessary to renew a license or certificate. Certificates of completion verifying attendance at approved activities during the previous licensing period must be maintained by the applicator for a period of 12 months after the most recent renewal of their license or certificate. The department may audit the CEUs an applicator has obtained during an onsite inspection or by letter requesting that copies of certificates of completion be mailed to the department. Certificates of completion will be compared with course attendance rosters on file with the department. Credits obtained at a single course cannot be split or divided between licensing periods.

(t) Except as provided in paragraph (1) of this subsection, each commercial or noncommercial applicator must obtain at least five CEUs prior to the expiration of the license. A minimum of one hour each must be obtained from two of the following categories: integrated pest management, laws and regulations or drift minimization.

(1) For commercial or noncommercial applicators certified in the aerial application category, three of the required five CEUs must be associated with aerial application operations to include one CEU [~~hour~~] each in: [~~laws and regulations, drift minimization and pesticide safety activities addressing human factors.~~]

(A) laws and regulations,

(B) drift minimization, and

(C) pesticide safety activities addressing human factors. 'Human factors' in aerial application is the portion of the aerial application mission which is guided or influenced by human characteristics.

This includes pre-flight, post-flight, and cockpit decision-making that affects the safe operation of the aircraft, the pilot, farm workers, bystanders, or those that may be affected by the aircraft during its pesticide application mission.

(2) (No change.)

[(3) Paragraph (1) of this subsection is effective beginning January 1, 2009.]

(u) (No change.)

(v) Private applicators must recertify as follows:

(1) Each licensed private applicator must obtain 15 CEUs within a five-year period including at least two CEUs [credits] in laws and regulations and two CEUs [credits] in integrated pest management.

(2) - (5) (No change.)

(w) (No change.)

(x) An applicator may seek credit for a continuing education activity that has not been submitted by the sponsor to the department, and the department will evaluate the supporting documentation of the course and assign the appropriate number of credits for the activity. To be eligible for accreditation, the following conditions must be met:

(1) - (5) (No change.)

(y) An applicator may file a written request for an extension of time for compliance with any deadline in these rules. Such request for extension may be granted by the department if the applicator files appropriate documentation to show good cause for failure to comply timely with the requirements of this subsection. Good cause means illness, extended medical disability, military deployment, or other extraordinary hardship which is beyond the control of the person seeking the extension.

(z) (No change.)

§7.27. Applicator Business Registration and Vehicle Identification for Applicator Businesses.

(a) (No change.)

(b) An applicator business vehicle identification decal, issued and provided by the department, shall be prominently affixed to each motor vehicle used by any applicator business that makes applications in the subcategory landscape maintenance of the lawn and ornamental pest control license use category, category 3(A) in §7.21 of this subchapter (relating to Applicator Certification). [Each applicator business register with the department and which employs any commercial pesticide applicators certified in, and making for-hire applications in, the plant pest and weed control license use category (category 3(A)) listed in §7.21 of this title (relating to Applicator Certification) shall prominently affix an applicator business vehicle identification decal issued and provided by the department on each motor vehicle used by an employee of the applicator business to access, for the purpose of making an application, the customer's property that has been, is, or will be treated with pesticides by the licensed applicator or a person supervised by the licensed applicator.]

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

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

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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SUBCHAPTER D. USE AND APPLICATION

4 TAC §§7.30, 7.32, 7.33, 7.35

The amendments to §§7.30, 7.32, 7.33, and 7.35 are proposed pursuant to the Texas Agriculture Code, §76.004, which provides the department with the authority to adopt rules for carrying out the provisions of Chapter 76, including rules providing for the collection, examination, and reporting of records, devices, and samples of pesticides: §76.107, which provides the department with the authority to adopt rules for testing and licensing of pesticide applicators and for use and application of pesticides; and §76.115, which provides that the department by rule may provide requirements for and inspect equipment used to apply regulated herbicides and regulate or prohibit the use of certain equipment in the application of regulated herbicides if that use would be hazardous in an area of the state.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.30. Classification of Pesticides.

(a) State-Limited-Use Pesticides Defined by Active Ingredient. [Because of their potential to cause adverse effects to nontargeted vegetation, all pesticide products containing the active ingredients as specified in this subsection, alone or in mixtures, shall be classified as stated in paragraphs (1) and (2) of this subsection when distributed in containers of a capacity larger than one quart for liquid material or two pounds for dry or solid material. If the products are marketed using metric measures, the classification applies to containers larger than one liter or one kilogram, respectively:]

(1) Except as provided by paragraph (3) of this subsection and because of their high potential to cause adverse effects to nontarget sites a pesticide product containing an active ingredient in the following list is classified as a state-limited-use pesticide and subject to the restrictions listed in paragraph (4) of this subsection, as well as all other provisions of law generally applicable to state-limited-use pesticides [State-Limited-Use.]

[(A)] 2,4-Dichlorophenoxyacetic acid (2,4-D); [2,4-Dichlorophenoxy butyric acid (2,4-DB); 2,4-Dichlorophenoxy propionic acid (2,4-DP); 2-Methyl-4-Chlorophenoxyacetic acid (MCPA); 3,6-Dichloro-o-anisic acid (dicamba); 3,4-Dichloropropionanilide (propanil); 5-bromo-3-sec-butyl-6-methyluracil (bromacil); 2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon); and, 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac); and]

(A) 2,4-Dichlorophenoxy butyric acid (2,4-DB);

(B) 2,4-Dichlorophenoxy propionic acid (2,4-DP);

(C) 2-Methyl-4-Chlorophenoxyacetic acid (MCPA);

(D) 3,6-Dichloro-o-anisic acid (dicamba);

(E) 3,4-Dichloropropionanilide (propanil);

(F) 5-bromo-3-sec-butyl-6-methyluracil (bromacil);

(G) 2,4-bis(isopropylamino)-6-methoxy-s-triazine (prometon);

(H) 3,7-dichloro-8-quinolinecarboxylic acid (quinclorac);

(I) Sodium flouoroacetate (Compound 1080); and,

(J) Sodium cyanide (M44).

[~~(B) any and all pesticides and devices using the active ingredients sodium fluoroacetate (Compound 1080) and sodium cyanide, in any quantity, for livestock predation control are classified as state-limited-use pesticides. Additional requirements for the handling and use of Compound 1080 and sodium cyanide are provided at §7.39 of this title (relating to Sodium Fluoroacetate (Compound 1080) Livestock Protection Collar--State-Limited-Use Requirements) and §7.40 of this title (relating to M-44 Sodium Cyanide--State-Limited-Use Requirements).~~]

(2) (No change.)

(3) A pesticide product containing an active ingredient listed in this subsection is exempt from classification as a state-limited-use pesticide or a regulated herbicide under this subsection if the product:

(A) is distributed in a container with a capacity less than or equal to one quart for liquid products or less than or equal to two pounds for dry or solid products;

(B) is a specialty fertilizer mixture labeled for ornamental use and registered as a commercial fertilizer under Chapter 63 of the Agriculture Code;

(C) is ready for use, requires no further mixing or dilution before use, and is packaged in a container of one gallon or less for liquid products or four pounds or less for dry or solid products.

(4) The following are restrictions on use and distribution of State-Limited-Use pesticides and regulated herbicides:

(A) A person may not purchase a pesticide classified as a state-limited-use pesticide or as a regulated herbicide under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Agriculture Code or Chapter 1951 of the Occupations Code or working under the direct supervision of a person so licensed.

(B) A person may not use a pesticide classified as a state-limited-use or as a regulated herbicide under this subsection unless the person is licensed as a pesticide applicator under either Chapter 76 of the Agriculture Code or Chapter 1951 of the Occupations Code or working under the direct supervision of a person so licensed.

(C) A person may not distribute a pesticide classified as state-limited-use or as a regulated herbicide under this subsection to a person not authorized by this section to purchase state-limited-use pesticide or a regulated herbicide.

(b) State-Limited-Use Pesticides Defined by Use. [~~Formulations containing the active ingredients previously listed in this section are exempt from being classified as state-limited use pesticides or regulated herbicides it they meet one of the criteria listed in paragraphs (1) or (2) or this subsection.~~]

(1) Due to the high potential for adverse effects to humans, animals, or the environment as the result of wide area public health pest control, a pesticide product otherwise classified as general use is classified as a state-limited-use pesticide when, and only when, applications are made by aerial application or with power-driven fogging equipment for the purpose of public health pest control. [~~specialty fertilizer mixtures that are labeled for ornamental use and registered as required in the Code, Chapter 63, concerning commercial fertilizer; or~~]

(2) A person may not use a pesticide for public health pest control in methods identified in paragraph (1) of this subsection unless the person is licensed as a pesticide applicator under Chapter 76 of the Agriculture Code and certified in the public health pest control category or working under the direct supervision of a person so licensed and is employed either by a state, county, city, or other local governmental body or is a person authorized to perform public health pest control under a contract between a state, county, city or other local governmental body and the person or the person's employer. [~~products that are ready for use and require no further mixing or dilution before use and are packaged in containers with a capacity of one gallon or less for liquid formulations and four pounds or less for dry or solid materials.~~]

(3) For purposes of this subsection, "public-health pest control" has the same meaning as provided in §7.21(a)(12) of this subchapter (relating to Applicator Certification).

(c) Prohibited Pesticides. [~~The following shall apply to the use or possession of chlordane or products containing chlordane.~~]

(1) Because of their persistence in the environment and bioaccumulative toxic effects, any product or substance in the following list or containing as an active ingredient a product or substance in the following list is a prohibited pesticide and subject to the prohibitions, restrictions, and requirements of paragraphs (2) and (3) of this subsection; [~~No person shall use any pesticide containing chlordane nor shall there be any permitted use of such pesticide(s) on or after the effective date of this subsection.~~]

(A) Aldrin;

(B) Chlordane

(C) DDT (dichlorodiphenyltrichloroethane);

(D) DDD (dichlorodiphenyldichloroethylene);

(E) Dieldrin;

(F) Hexachlorobenzene;

(G) All mercury-based pesticides;

(H) Mirex;

(I) Toxaphene;

(J) Heptachlor;

(K) 2,4,5-trichlorophenoxyacetic acid (2,4,5-T);

(L) 2,4,5-trichlorophenoxypropionic acid (2,4,5-TP (Silvex)).

(2) No person shall use a prohibited pesticide for any purpose. [~~Persons in possession of chlordane or compounds containing chlordane shall store the pesticide in a manner as to prevent the release of such pesticide(s) into the environment until such time as the pesticide container or compound can be disposed of in accordance with the provisions of the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361.~~]

(3) A person in possession of a prohibited pesticide shall by proper storage, care, handling, and transport prevent the release of the prohibited pesticide into the environment, and shall prevent exposure of human beings or other susceptible species to the prohibited pesticide, and shall dispose of the prohibited pesticide in accordance with all provisions of state and federal law.

§7.32. Records of Distribution.

(a) (No change.)

(b) The record of each distribution required to be kept by this section shall be kept separate from the person's other business records and shall contain:

(1) - (4) (No change.)

(5) the name and address of any person who took delivery of the pesticide on behalf of, and acting under the authorization of the responsible licensed or certified applicator, including distributions to any entity on behalf of a Texas licensed pesticide dealer. [~~if the pesticide is made available to a nonlicensed person acting under the authorization of the licensed or certified applicator or licensed dealer to whom the pesticide is distributed, the name and address of the nonlicensed person; and~~]

(6) (No change.)

(c) - (e) (No change.)

(f) Out-of-state licensed dealers who do not operate a physical distribution location in the state will be required to submit to the department on a quarterly reporting period (January-March, April-June, July-September, October-December), [~~not later than the tenth day of each month,~~] a complete record of all restricted-use or state-limited-use pesticides or regulated herbicides distributed into the state during the prior quarterly reporting period [~~month~~]. Reports must be submitted to the department no later than 15 days after each reporting period. If no such distributions were made for in a quarterly reporting period [~~the prior month~~], the dealer shall submit a letter to the department no later than 15 days after the ending day of that reporting period stating that no such distributions were made. Forms for submitting distribution records under this subsection may be obtained from the department. If the department form is not used, the form submitted must contain all the information required by this section.

(g) (No change.)

§7.33. Records of Application.

(a) (No change.)

(b) The record of each pesticide use required by this section shall contain:

(1) - (7) (No change.)

(8) wind direction and velocity except for those applications made indoors or otherwise within a structure; [~~and air temperature;~~]

(9) air temperature; [~~the FAA "N" number for aerial application equipment or identification number or decal number for other types of application equipment.~~]

(10) application method or type of equipment used to make the application; [~~the name and department license number of the applicator responsible for the application and, if different, the name of the person actually making the application,~~ and]

(11) the FAA "N" number for aerial application equipment; [~~the spray permit number for regulated herbicides applied in a regulated county.~~]

(12) the name and department pesticide license number of the applicator responsible for the application and, if different, the name of the person actually making the application;

(13) the spray permit number for regulated herbicides applied in a regulated county; and

(14) Documentation to verify training of persons working under the supervision of a licensed pesticide applicator as required by §7.31 of this title.

(c) - (h) (No change.)

§7.35. [~~Registration and~~] Inspection of Equipment.

All application equipment used for pesticide applications is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the department determines that the application equipment is not in a condition to provide safe and proper application of a pesticide, the applicator or person responsible for the piece of equipment shall be issued a Stop Use, Stop Distribution or Removal Order prohibiting continued use of the equipment. The department must inspect the equipment and provide a written release of the Stop Use, Stop Distribution or Removal Order before allowing the use of such equipment.

[~~(a) Application equipment used to apply a restricted-use or state-limited-use pesticide or regulated herbicide to the land of another for compensation must be registered with the department on prescribed forms and identified by a license decal. The department shall issue a license decal to be attached to each such piece of equipment in a conspicuous place. The license decal will contain the following information:~~]

[~~(1) an identification number; and~~]

[~~(2) the name of the issuing agency.~~]

[~~(b) Notification shall be given to the department on prescribed forms of any equipment ownership changes and the license decal must be removed before giving up possession of the equipment.~~]

[~~(c) All application equipment used for pesticide applications is subject to inspection by the department at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, the department shall require the needed repairs or adjustments before allowing the use of such equipment.~~]

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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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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SUBCHAPTER E. REGULATED HERBICIDES

4 TAC §7.52, §7.53

The Texas Department of Agriculture (the department), as petitioned by the respective county courts having jurisdiction, proposes amendments to 4 TAC Chapter 7, Subchapter E, §7.52, concerning Counties Regulated, and §7.53, concerning County Special Provisions for the use of regulated herbicides. The amendments are proposed to make changes to the department's herbicide regulations, as a result of orders passed by the county commissioner courts, in accordance with Texas Agriculture Code, §76.144, in counties subject to the regulations requesting that changes be made to their county regulations.

Proposed amendments to §7.52 will delete Calhoun and Hidalgo counties from the list of counties regulated. Proposed amendments to §7.53 will make changes to the county special provisions for Burleson County, Dickens County, and San Patricio County. Proposed additions to §7.53 will add county specific provisions for Childress and Hardeman counties.

Randy Rivera, Administrator for Agriculture Protection and Certification, has determined that for the five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as amended.

Mr. Rivera also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the sections will be increased efficiency and effectiveness in the use of regulated herbicides in regulated counties. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Randy Rivera, Administrator for Agriculture Protection and Certification, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code §76.144, which provides that the Texas Department of Agriculture with the authority to adopt rules concerning the use of regulated herbicides in a county in which the commissioners court has entered an order in accordance with the Texas Agriculture Code §76.144.

The code affected by the proposal is the Texas Agriculture Code, Chapter 76.

§7.52. Counties Regulated.

The following counties shall be subject to the provisions of the Act, Subchapter G, unless specifically excepted by provisions of §7.53 of this title (relating to County Special Provisions) Aransas, Austin, Bailey, Baylor, Brazoria, Brazos, Briscoe, Burleson, Childress, [~~Calhoun,~~] Cochran, Collin, Collingsworth, Culberson, Dallas, Dawson, Deaf Smith, Delta, Dickens, Donley, El Paso, Falls, Foard, Fort Bend, Gaines, Galveston, Hall, Harris, Hardeman, Haskell, [~~Hidalgo~~], Hudspeth, Hunt, Jackson, King, Knox, Lamar, Lamb, Loving, McLennan, Martin, Matagorda, Midland, Milam, Moore, Motley, Parmer, Refugio, Robertson, Rockwall, Runnels, San Patricio, Waller, Ward, Wharton and Wilbarger.

§7.53. County Special Provisions.

(a) - (g) (No change.)

(h) Burleson.

(1) The application of regulated herbicides by aircraft is allowed during the period of October 1 through February 28 of the following year [~~prohibited~~]. In no case shall regulated herbicides be used to treat any area that is nearer than two miles to any susceptible crops.

(2) Between March [~~April~~] 1 and September 30 [~~15~~] of each year, the following restrictions on the use of 2,4-D formulations shall apply.

(A) Only amine formulations may be used with a boom-type sprayer for ground applications in that area beginning at Milam County line; thence south along FM Road 1362 to FM Road 166; thence east to FM Road 2039; thence south to FM 60; thence west on FM 60 to Davidson Creek; thence south along Davidson Creek to Washington County line to Brazos River; thence north along Brazos County line to Milam County line, the place of the beginning.

(B) Cluster nozzles are prohibited in the area designated in subparagraph (A) of this paragraph.

(i) Childress.

(1) No permit is required for the application of regulated herbicides during the period of September 16 to May 15 of the following calendar year.

(2) The application of the following regulated herbicides is prohibited during the regulated period beginning May 16 and ending September 15 of each year:

(A) Ester formulation of 2,4-Dichlorophenoxyacetic acid (2,4-D);

(B) 2-Methyl-4-Chlorophenoxyacetic Acid (MCPA);

(3) The application of Dicamba and 2,4-D amine is prohibited during the regulated period except during the period of May 10 and ending June 5 of each year with the requirement to obtain a permit.

[~~(i) Calhoun.~~]

[~~(1) The aerial application of all formulations of 2,4-D is prohibited between March 10 and September 15 of each year.~~]

[~~(2) No permit is required for spraying regulated herbicides during the months of January and February of each year.~~]

(j) - (n) (No change.)

(o) Dickens.

(1) The application of all ester formulations of regulated herbicides is prohibited between May 15 and September 15. [~~No permit is required for the application of regulated herbicides during the period beginning September 1 and ending May 15 of the following year.~~]

(2) The application of regulated herbicides by aerial application is prohibited between May 15 and September 15. [~~A permit for the application of all regulated herbicides is required for the period beginning May 16 and ending August 31 of each year.~~]

(3) The application of regulated herbicides by cluster nozzle applications is prohibited between May 15 and September 15. [~~This subsection applies only to that portion of Dickens County that lies below the Caprock Escarpment.~~]

(4) Only 2,4-D amine formulation and dicamba may be applied by ground applications between May 15 and September 15, with the requirement of a permit.

(5) No permit is required for the application of regulated herbicides between September 16 and May 14.

(p) - (t) (No change.)

(u) Hardeman.

(1) No permit is required for the application of regulated herbicides during the period of September 16 to May 15 of the following calendar year.

(2) A permit is required for the application of the following regulated herbicides during the regulated period beginning May 16 and ending September 15 of each year:

(A) Any formulation of 2,4-Dichlorophenoxy acetic acid (2,4-D);

(B) 2-Methyl-4-chlorophenoxy acetic acid (MCPA);

(C) Dicamba.

(v) [~~(u)~~] Harris.

(1) The use of high volatile herbicides is prohibited.

(2) In no case shall 2,4-D be used to treat any area that is nearer than two miles to any susceptible crop.

(w) [~~(v)~~] Haskell.

(1) No permit is required between November 1 and May 20 of the following calendar year.

(2) Aerial application of regulated herbicides is prohibited between June 2 and November 1 of each year.

~~[(w) Hidalgo. The regulated portion of Hidalgo County is as follows:]~~

~~[(1) beginning at north county line and U.S. 281; thence south to FM 495; thence west to State Highway 107 (Conway Drive); thence south to U.S. 83 Expressway; thence west along U.S. 83 to west county line;]~~

~~[(2) all other lands in Hidalgo County are exempt from the Act, Subchapter G and regulations adopted thereunder.]~~

(x) - (mm) (No change.)

(nn) San Patricio. No permit is required during the period beginning August 15 [~~September 1~~] and ending March 1 of the following year. Application of regulated herbicides during the period of March 2 through August 14 [~~31~~] must be in compliance with the Act, Subchapter G and regulations adopted thereunder. Only boom-type equipment can be used, for ground applications with nozzle height not to exceed 24 inches and maximum pressure not to exceed 20 pounds per square inch. The use of 2,4-D amine herbicides must meet the following requirements for both ground and aerial applications:

(1) wind velocity of 0-5 mph downwind within 16 rows and upwind 8 rows;

(2) wind velocity of 6-10 mph downwind 1/8 mile and upwind 8 rows.

(oo) - (pp) (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 November 5, 2014.

TRD-201405302
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER A. PRINCIPLES AND PROCEDURES OF THE COMMISSION

13 TAC §2.7

The Texas State Library and Archives Commission proposes new 13 TAC §2.7, regarding the Library Systems Act Advisory Board. The proposed rule fulfills the requirement to have a rule for advisory committees that states the purpose and tasks of the committee and the manner in which they report to the commission.

Deborah Littrell, Director, Library Development and Networking, has determined that for the first five years the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new rule. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed rule. The public benefit of the proposed rule is to make available the purpose and tasks of the advisory committee and the manner in which they report to the agency. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the provisions.

Written comments on this proposal may be submitted by December 22, 2014 to Deborah Littrell, Texas State Library, Box 12927, Austin, Texas 78711-2927; by fax to (512) 936-2306; or by e-mail to dlittrell@tsl.texas.gov.

The new section is proposed under the authority of Government Code §2110.005 which directs the agency to state the purposes and tasks of the advisory committee and describe the manner in which the committee will report to the agency.

No other code of statute is affected by the proposal.

§2.7. Library Systems Act Advisory Board.

(a) The Library Systems Act Advisory Board's purpose is to advise the commission on matters relating to the Library Systems Act. The advisory board's tasks include reviewing and making recommendations regarding the minimum standards for accreditation of libraries in the state library system, reviewing and making recommendations regarding the application of the standards to local libraries, reviewing and making recommendations regarding the future development of the Library Systems Act, reviewing and making recommendations regarding grant programs for local libraries, and reviewing and making recommendations regarding agency programs that affect local libraries.

(b) The advisory board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

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 November 10, 2014.

TRD-201405380
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-5459

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13 TAC §2.8

The Texas State Library and Archives Commission proposes new 13 TAC §2.8, regarding the Texas Historical Records Advisory Board. The proposed rule fulfills the requirement to have a rule for advisory committees that states the purpose and tasks of the committee and the manner in which they report to the commission.

Jelain Chubb, Director, Archives and Information Services Division, has determined that for the first five years the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended rule. Ms. Chubb does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed rule. The public benefit of the proposed rule is to make available the purpose and tasks of the advisory committee and the manner in which they report to the agency. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the provisions.

Written comments on this proposal may be submitted by December 22, 2014 to Jelain Chubb, Texas State Library, Box 12927, Austin, Texas 78711-2927; by fax to (512) 463-5455; or by e-mail to jchubb@tsl.texas.gov.

The new section is proposed under the authority of Government Code §2110.005 which directs the agency to state the purposes and tasks of the advisory committee and describe the manner in which the committee will report to the agency.

No other code of statute is affected by the proposal.

§2.8. Texas Historical Records Advisory Board.

(a) The Texas Historical Records Advisory Board's purpose is to serve as the central advisory body for historical records planning and projects funded by the National Historical Publications and Records Commission that are developed and implemented in this state and to advise the Texas State Library and Archives Commission on matters related to historical records in the state. The advisory board's tasks include those enumerated in Government Code §441.242.

(b) The advisory board reports to the commission through its meetings and meeting minutes, and/or reports or letters to the Director and Librarian.

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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TRD-201405379
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-5459

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CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.4

The Texas State Library and Archives Commission proposes amendments to 13 TAC §8.4, regarding the TexShare Advisory Board. The proposed amended rule fulfills the requirement to have a rule for advisory committees that states the purpose and tasks of the committee and the manner in which they report to the commission.

Deborah Littrell, Director, Library Development and Networking, has determined that for the first five years the section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended rule. Ms. Littrell does not anticipate either a loss of, or an increase in, revenue to state or local government as a result of the proposed changes. The public benefit of the proposed amended section is to make available the purpose and tasks of the advisory committee and the manner in which they report to the agency. There will be no impact on small businesses, micro-businesses, or individuals as a result of enforcing the provisions.

Written comments on this proposal may be submitted by December 22, 2014 to Deborah Littrell, Texas State Library, Box 12927, Austin, Texas 78711-2927; by fax to (512) 936-2306; or by e-mail to dlittrell@tsl.texas.gov.

The amendments are proposed under the authority of Government Code §2110.005 which directs the agency to state the purposes and tasks of the advisory committee and describe the manner in which the committee will report to the agency.

No other code of statute is affected by the proposal.

§8.4. Advisory Board.

(a) The commission shall appoint an advisory board to advise the commission on matters relating to the consortium. The advisory board is charged with reviewing information on the status and plans for consortial programs and services, providing input and recommendations regarding those programs and services, and making recommendations regarding consortia membership and governance. The advisory board may recommend to the Director and Librarian that: [~~At least two members must be representatives of the general public. Composition of the board will be representative of the various types of libraries comprising the membership. Members of the advisory board must be qualified by training and experience to advise the commission on policy.~~]

(1) the consortium enters into cooperative projects with entities other than public libraries, libraries of clinical medicine, or institutions of higher education; and/or

(2) the consortium admit or deny membership status or affiliated membership status to nonprofit library collectives.

(b) Members of the advisory board shall be chosen to present as much variety as possible in geographic distribution and size and type of institution. At least two members must be representatives of the general public. Composition of the board will be representative of the various types of libraries comprising the membership. Members of the advisory board must be qualified by training and experience to advise the commission on policy.

(c) The advisory board shall meet at least twice a year regarding consortium programs and plans at the call of the advisory board's chairman or of the Director and Librarian. The advisory board reports to the agency through its meeting and meeting minutes, and/or reports or letters to the Director and Librarian.

(d) Members of the advisory board serve three-year terms beginning September 1.

(e) A member of the advisory board serves without compensation but is entitled to reimbursement for actual and necessary expenses

incurred in the performance of official duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(f) The advisory board shall elect a chairman and a vice chairman at the first meeting of each fiscal year.

~~[(g) The advisory board may recommend to the Director and Librarian and/or to the commission that:]~~

~~[(1) the consortium enters into cooperative projects with entities other than public libraries, libraries of clinical medicine, or institutions of higher education; and/or]~~

~~[(2) the consortium admit or deny membership status or affiliated membership status to nonprofit library collectives.]~~

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 November 10, 2014.

TRD-201405381
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 463-5459

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) proposes amendments to §223.1, concerning Fees. The amendments are proposed under the authority of the Occupations Code §301.151 and §301.155 and are necessary to comply with budgetary requirements established by the Texas Legislature.

As required by the General Appropriations Act for the 2014-2015 Biennium, 83rd Texas Legislature, Regular Session, 2013, the Board is required, by a contingency revenue rider, to generate fees totaling $25,334,204. In July, 2013, the Board voted to revise its fee structure in order to raise this additional money. Based on a review of licensee renewal trends for the past five fiscal years, the Board expects the number of renewals for fiscal year 2015 to increase by 3%. Provided this projection holds true, at the current fee structure, the Board projects that it will exceed the amount of monies required by the contingency revenue rider by approximately $4,000,000. As a result, the Board has determined that it is appropriate to amend its fee structure to reduce the anticipated amount of surplus that does not support the Board's 2014-2015 budget.

The Board's current renewal fee for a licensed vocational nurse license is $55 each biennium. The Board's current renewal fee for a registered nurse license is $70 each biennium. The Board's current renewal fee for an advanced practice registered nurse license is $60 each biennium. The proposed amendments will reduce each level of licensure renewal by $10, thereby making the new renewal fee for a vocational nurse license $45; the renewal fee for a registered nursing license $60; and the renewal fee for an advanced practice registered nursing license $50. The proposed fee reduction will decrease the agency surplus and allow the Board to abide by the Office of the Comptroller's revenue certification.

Section by Section Overview. Proposed amended §223.1(a)(3)(A) sets the renewal fee for a registered nursing license at $60. Proposed amended §223.1(a)(3)(B) sets the renewal fee for a vocational nursing license at $45. Proposed amended §223.1(a)(16) sets the renewal fee for an advanced practice registered nursing license at $50.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendments are in effect, the proposal will reduce the current surplus of the fiscal year. Specifically, Ms. Thomas estimates that 30,000 vocational nurses will renew their licenses between January and August of 2015. Based on the proposed $10 renewal fee reduction, the proposal will reduce revenue by $300,000. Ms. Thomas further estimates that 84,000 registered nurses will renew their licenses between January and August of 2015. Based on the proposed $10 renewal fee reduction, the proposal will reduce revenue by $840,000. Ms. Thomas estimates that 6,000 advance practice registered nurses will renew their licenses between January and August of 2015. Based on the proposed $10 renewal fee reduction, the proposal will reduce revenue by $60,000. Taken together, it is estimated that the proposal will reduce revenue by a total amount of $1,200,000.00.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be the adoption of requirements that comply with the budgetary requirements of the Texas Legislature, while maintaining the Board's overall operational efficiency.

Potential Costs of Compliance. The Board does not anticipate any associated costs of compliance with the proposed amendments, as the proposal does not impose costs of compliance on any person subject to the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposal will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the proposal.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on December 21, 2014, to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Mark Majek, Director of Operations, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail

to mark.majek@bon.texas.gov, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendments are proposed under the Occupations Code §301.151 and §301.155.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) states that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering Chapter 301. The Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 301.155(b) states that the Board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under §301.158.

Section 301.155(c) provides that the Board shall assess a surcharge of not less than $3 or more than $5 for a registered nurse and a surcharge of not less than $2 or more than $3 for a vocational nurse to the fee established by the Board under §301.155(a) for a license holder to renew a license under this chapter. The Board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The Board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under §105.002, Health and Safety Code. The Board is not required to collect the surcharge if the Board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

Cross Reference to Statute. The following statutes are affected by this proposal: the Occupations Code §301.151 and §301.155.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

(3) Licensure renewal (each biennium):

(A) Registered Nurse (RN): $60 [~~$70~~];

(B) Licensed Vocational Nurse (LVN): $45 [~~$55~~];

(4) - (15) (No change.)

(16) Advanced Practice Nurse renewal: $50 [~~$60~~];

(17) - (25) (No change.)

(b) (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 November 5, 2014.

TRD-201405303
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 305-6822

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.3, §15.4

The General Land Office (GLO) proposes amendments to §15.3 (relating to Administration) to require applicants to notify immediately adjacent landowners, where a mitigation plan is required, establish minimum standards for notice to adjacent landowners, modify language to clarify application requirements, and provide consistency of language in the rules. The GLO also proposes amendments to §15.4 (relating to Dune Protection Standards) to modify requirements related to requirements for notice to landowners immediately adjacent landowners, modify "natural line of vegetation" references to be consistent with recent amendments to other sections of the rule, and clarify language within the rule. Proposed amendments to §15.4 will also modify "natural line of vegetation" references to be consistent with recent amendments to other sections of the rule and delete references to the Attorney General to conform to amendments in HB 1457 (Acts 2003, 78th Leg., ch. 245, eff. immediately), which modified implementation and enforcement authority under the Open Beaches Act, and clarify language.

BACKGROUND AND SECTION BY SECTION ANALYSIS OF THE PROPOSED AMENDMENTS

§15.3, Administration

The proposed amendments modify §15.3(s)(2) to specify dune protection permits, rather than using the general term permit. The proposed amendments modify §15.3(s)(4)(A) to require applicants to provide contact information for all landowners immediately adjacent a tract where a mitigation plan is required. The proposed amendments modify language in §15.3(s)(4)(A) to more clearly delineate between permits and certificates and modify dune protection permit and construction certificate requirements to clarify that the application must provide both a description of the proposed structure and the number of proposed structures, identify all existing and proposed elevations in the grading and layout plan, and provide current color photographs of the site. The proposed amendments to §15.3(s)(4)(A) also add citations to the requirements applicable to the development of a mitigation plan and modify language related to the disclosure of the location of seawalls to be consistent between §15.3(s)(4)(B).

The proposed amendments modify language in §15.3(s)(4)(B) to clarify that the application must provide a description of the proposed structures and the number of structures and current color photographs of the site. The proposed amendments also mod-

ify language related to the disclosure of the location of erosion response structures to be consistent between §15.3(s)(4)(A).

The proposed amendments modify language in §15.3(s)(4)(D) to modify the language to specify that local governments must require applicants to provide current historic erosion data.

The proposed amendments modify §15.3(s)(4)(E) to allow local governments to consider information from landowners immediately adjacent to a tract for which an application has been submitted.

The proposed amendments modify language in §15.3(t) to use the term "permittee" instead of "applicant".

§15.4, Dune Protection Standards

The proposed amendments modify §15.4(b)(5) to insert the prohibition under §15.4(f) against issuing a permit to an applicant who cannot demonstrate the ability to mitigate adverse effects to dune and dune vegetation into the determinations that a local government must make prior to issuing a dune protection permit. The proposed amendments also add §15.4(b)(6) which requires the local government to determine that the applicant has provided all adjacent landowner with notice of the hearing on the permit at least 10 days prior to the hearing on the application.

The proposed amendments modify §15.4(c)(8) to delete the term "natural" to be consistent with the changes made in response to legislative amendments made to TNRC §61.0171 (Acts 2013, 83rd Leg., ch. 1086, eff. September 1, 2013), wherein the Line of Vegetation (LOV) may be delineated without reference to the natural state of the LOV if the commissioner determines that a meteorological event has obliterated the LOV.

The proposed amendments modify §15.4(e) to clarify that local governments must consider current historic erosion data when determining whether to issue a permit and to delete references to the Attorney General to conform to amendments in HB 1457 (Acts 2003, 78th Leg., ch. 245, eff. immediately) which modified implementation and enforcement authority under the Open Beaches Act.

The proposed amendments modify §15.4(f) to delete language that has been inserted into §15.4(b)(5), clarify that a local government must add a permit condition that the applicant will mitigate for the adverse effects in accordance with the mitigation plan, add the requirement that, when a mitigation plan is required, an applicant provide landowners immediately adjacent to the tract with notice of the hearing on the permit at least 10 days prior to the hearing, and specify that the notice may be made by sending a copy of the hearing notice by certified mail to addresses listed in the county central appraisal district records.

The proposed amendments modify §15.4(f)(1) to use the term "applicant" instead of "permittee", where appropriate, and to delete the term "natural" to be consistent with the changes made in response to legislative amendments made to TNRC §61.0171 (Acts 2013, 83rd Leg., ch. 1086, eff. September 1, 2013).

The proposed amendments modify §15.4(f)(2) to use the term "applicant" instead of "permittee", where appropriate.

The proposed amendments modify §15.4(f)(4) to clarify that local governments shall require the permit holder to compensate for the adverse effects to dunes and dune vegetation at a 1:1 ratio, which is also provided for in §15.4(g)(5).

The proposed amendments modify §15.4(f)(5) to change "permittees" to singular "permittee".

FISCAL AND EMPLOYMENT IMPACTS

Mrs. Helen Young, Deputy Commissioner for the GLO's Coastal Resources Division, has determined that for each year of the first five years the amended section as proposed is in effect, there will be minimal, if any, fiscal implications for the state government as a result of enforcing or administering the amended sections.

Mrs. Young has determined that there will be some fiscal impact on local governments as a result of enforcing or administering the amended sections. The GLO, however, cannot estimate the costs given the difficulties of ascertaining the costs associated with how each local government will choose to implement the requirement in their jurisdiction and the uncertainty of the number of applications submitted which will require a dune mitigation plan and, therefore, notice to landowner. Mrs. Young has determined that there may be costs of compliance for large and small businesses resulting from implementation of the amendments but the costs cannot be determined because the costs would depend upon the unique circumstances of each individual application. Mrs. Young has also determined that for each year of the first five years the amended section, as proposed, is in effect, there will be no impacts to the local economy.

PUBLIC BENEFIT

Mrs. Young has determined that for the first five years the public will benefit from the proposed amendments by providing immediately adjacent landowners with the knowledge about construction that may adversely affect dunes, dune vegetation and their own property. The proposed amendments provide landowners immediately adjacent to the proposed construction an opportunity to review the permit and identify any impacts to the integrity of the dune system, and therefore, their own property. The proposed amendment will also provide landowners an opportunity to attend the meeting on the permit and comment to their local governments on the impacts of construction on the integrity of the dune system, and therefore, their own property, the mitigation plan, and the issuance of the permit.

Mrs. Young has determined that there may be some economic costs to persons required to comply with these amendments but the costs cannot be determined because the costs would depend upon how each local government chooses to implement the requirement in their jurisdiction and the unique circumstances of each individual application.

ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are adopted under the specific authority of §63.121, which provides authority for the Commissioner to promulgate rules for the protection of critical dune areas, and do not exceed the expressed requirements of federal or state law. The proposed amendments implement TNRC §63.121 and are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. The GLO has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. GLO has determined that the proposed amendments would not affect any private real property in a manner that restricts or limits any owner's right to property or use of that property.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program as provided for in the Texas Natural Resource Code §33.2053, and 31 TAC §505.11(a)(1)(J) and §505.11(c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determinate that the proposed action is consistent with the applicable CMP goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The proposed rulemaking provides individuals directly affected by construction that adversely affect dunes and dune vegetation an opportunity to review and comment on the construction. The proposed amendments are consistent with the CMP goals outlined in 31 TAC §501.12(3) and §501.12(5). These goals seek to minimize loss of human life and property due to the impairment and loss of protective features of Coastal Natural Resource Areas (CNRAs), balance the benefits of economic development and multiple human uses, protecting, preserving, restoring, and enhancing CNRAs, and minimizing loss of human life and property. The proposed amendments are consistent with 31 TAC §501.12(3) as they minimize loss of human life and property from impairment and loss of protective features of CNRAs, such as dunes and dune vegetation, by notifying affected landowners of proposed destruction of dunes and providing those landowners with an opportunity to participate in the deliberative process of issuing dune permits. The proposed amendments are consistent with 31 TAC §501.12(5) as they balance economic development with the interest of the neighboring property owners in the protection of dunes by providing adjacent landowners with the ability to advocate for the protection, preservation, restoration, and enhancement of dunes, which minimizes loss of human life and property.

The proposed rules are also consistent with CMP policies in §501.26(a)(1) and (2) (relating to Policies for Construction in the Beach/Dune System) by ensuring that construction within critical dune areas do not materially weaken dunes or materially damage dune vegetation and construction is sited, designed, maintained, and operated so that adverse effects are avoided to the greatest extent practicable.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 475-1859 or email to walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendments are proposed under Texas Natural Resources Code §63.121, relating to commissioner's authority to adopt rules for the identification and protection of critical dune areas.

Texas Natural Resources Code §§61.011 - 61.026 and §§63.001 - 6.1814 are affected by the proposed amendments.

§15.3. Administration.

(a) - (r) (No change.)

(s) Acts prohibited without a dune protection permit or beachfront construction certificate. An activity requiring a dune protection permit may typically also require a beachfront construction certificate and vice versa. Local governments shall, whenever possible, issue permits and certificates concurrently when an activity requires both. In their dune protection and beach access plans, local governments may combine the dune protection permit and the beachfront construction certificate into a single permit or a two-part permit; however, they are not required to do so.

(1) (No change.)

(2) Activities exempt from dune protection permit requirements. Pursuant to the Dune Protection Act, §63.052, the following activities are exempt from the requirement for a dune protection permit, but are subject to the requirements of the Open Beaches Act and the rules promulgated under the Open Beaches Act. Where local governments have separate authority to regulate the following activities, permittees shall comply with the local laws as well. The activities exempt from the dune protection permit requirements are:

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

(3) (No change.)

(4) Dune protection permit [~~Permit~~] and beachfront construction certificate application requirements. Local governments shall require that all permit and certificate applicants fully disclose in the application all items and information necessary for the local government to make a determination regarding a permit or certificate. Local governments may require more information, but they shall require that applicants for dune protection permits and beachfront construction certificates provide, at a minimum, the following items and information.

(A) Dune protection permit [~~Permit~~] application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) - (ii) (No change.)

(iii) a description of the [~~number of~~] proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) - (viii) (No change.)

(ix) a grading and layout plan identifying all existing and proposed elevations (in reference to the National Oceanic and Atmospheric Administration datum), existing contours of the project area (including the location of dunes and swales), and proposed contours for final grade;

(x) current color photographs of the site which clearly show the current location of the vegetation line and the existing dunes on the tract;

(xi) a description of the effects of the proposed activity on the beach/dune system which cannot be avoided should the proposed activity be permitted, including, but not limited to, damage to dune vegetation, alteration of dune size and shape, and changes to dune hydrology;

(xii) a comprehensive mitigation plan which conforms with the requirements in §15.4 of this title (relating to Dune Protection Standards) and §15.7 of this title (relating to Local Government Management of the Public Beach) which, at a minimum, includes a detailed description of the methods which will be used to avoid, minimize, mitigate and/or compensate for any adverse effects on dunes or dune vegetation;

(xiii) where a mitigation plan is required, the contact information for all landowners immediately adjacent to the tract and affirmation by the applicant that the adjacent landowners will be provided with notice of the hearing at least 10 days prior to the hearing on the application;

(xiv) [~~(xiii)~~] proof of the applicant's financial capability acceptable to the local government to mitigate or compensate for adverse effects on dunes and dune vegetation;

(xv) [~~(xiv)~~] an accurate map, site plan, or plat of the site identifying:

(I) the site by its legal description, including, where applicable, the subdivision, block, and lot;

(II) the location of the property lines and a notation of the legal description of adjoining tracts;

(III) the location of the dune protection line, the line of vegetation, proposed and existing structures, and the project area of the proposed construction on the tract;

(IV) proposed roadways and driveways and proposed landscaping activities on the tract;

(V) the location of any retaining walls, seawalls or any other erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line; and

(VI) if known, the location and extent of any man-made vegetated mounds, restored dunes, fill activities, or any other pre-existing human modifications on the tract.

(B) Certificate application requirements for large-and small-scale construction. For all proposed construction, local governments shall require applicants to submit the following items and information:

(i) - (ii) (No change.)

(iii) a description of the [~~number of~~] proposed structures, the number of structures, and whether the structures are amenities or habitable structures;

(iv) - (vi) (No change.)

(vii) current color photographs of the site which clearly show the current location of the vegetation line and any dunes on the tract which are seaward of the dune protection line;

(viii) an accurate map, site plan, or plat of the site identifying:

(I) - (II) (No change.)

(III) the location of the proposed construction and the distance between the proposed construction and mean high tide, the [~~vegetation~~] line of vegetation, the dune protection line, and the landward limit of the beachfront construction area;

(IV) - (VI) (No change.)

(VII) the location of any retaining walls, seawalls, or erosion response structures on the tract and on the properties immediately adjacent to the tract and within 100 feet of the common property line.

(C) - (F) (No change.)

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

(7) Local government review. When determining whether to approve a proposed activity, a local government shall review and consider:

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

(E) any other information the local government may consider useful to determine consistency with the local government's dune protection and beach access plan, including resource information made available to them by federal and state natural resource entities and landowners immediately adjacent to the tract. A local government shall not issue a dune protection permit or beachfront construction certificate that is inconsistent with its plan, this subchapter, and other state, local, and federal laws related to the requirements of the Dune Protection Act and Open Beaches Act.

(t) Term and renewal of permits and certificates.

(1) A local government's dune protection permits or beachfront construction certificates shall be valid for no more than three years from the date of issuance. A local government may renew a dune protection permit or beachfront construction certificate allowing proposed construction to continue if the activity as proposed in the application for renewal meets the applicable state and local standards and the permittee supplements the information provided in the original permit or certificate application materials with additional information indicating any changes to the original information provided by the permittee [~~applicant~~]. For the purpose of maintaining administrative records for permits, certificates, and renewals, if any, local governments are required to keep all original application materials submitted by any applicant for three years, as provided in subsection (u) of this section. Each renewal of a permit and certificate allowing construction shall be valid for no more than 90 days. A local government shall issue only two renewals for each permit or certificate. After the local government issues two renewals, the permittee must apply for a new permit or certificate. In addition, local governments shall require a permittee to apply for a new permit or a certificate if the proposed construction is changed in any manner which causes or increases adverse effects on dunes, dune vegetation, and public beach use and access within the geographic scope of this subchapter.

(2) - (5) (No change.)

(u) (No change.)

§15.4. Dune Protection Standards.

(a) (No change.)

(b) Procedures for local government permit determinations and permit issuance. Before issuing a dune protection permit, a local government shall make the following determinations.

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

(4) The applicant's mitigation plan will adequately minimize, mitigate, and/or compensate for any unavoidable adverse effects, as provided in subsections (f)(2) - (5) of this section, and the applicant

has affirmatively demonstrated the ability to mitigate adverse effects on dunes and dune vegetation.

(5) Where mitigation is required, that the applicant has provided landowners immediately adjacent to the tract with notice of the hearing at least 10 days prior to the hearing on the application.

(c) Prohibited activities. A local government shall not issue a permit or certificate authorizing the following actions within critical dune areas or seaward of that local government's dune protection line:

(1) - (7) (No change.)

(8) constructing concrete slabs or other impervious surfaces within 200 feet landward of the [~~natural~~] line of vegetation. Local governments may authorize construction of a concrete slab or other impervious surface beneath a habitable structure elevated on pilings provided the slab will not extend beyond the perimeter of the structure and will not be structurally attached to the building's foundation. Local governments shall not authorize the construction, outside the perimeter of a habitable structure, of a concrete slab or other impervious surface whose area exceeds 5.0% of the footprint of the habitable structure. The use of permeable materials such as brick pavers, limestone, or gravel is recommended for drives or parking areas;

(9) - (11) (No change.)

(d) (No change.)

(e) Local government considerations when determining whether to issue a dune protection permit. Local governments shall consider the following items and information when determining whether to grant a permit:

(1) all comments submitted to the local government by the General Land Office [~~and the attorney general's office~~];

(2) - (4) (No change.)

(5) the most recent [~~local~~] historical erosion rate as determined by the University of Texas at Austin, Bureau of Economic Geology, and whether the proposed construction may alter dunes and dune vegetation in a manner that may aggravate erosion;

(6) - (11) (No change.)

(f) Mitigation. The mitigation sequence shall be used by local governments in determining whether to issue a permit, after the determination that no material weakening of dunes or material damage to dunes or dune vegetation will occur within critical dune areas or seaward of the dune protection line. The mitigation sequence consists of the following steps: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating, or restoring the affected environment; and compensating for the impact by replacing resources lost or damaged. [~~If, for any reason, an applicant cannot demonstrate the ability to mitigate adverse effects on dunes and dune vegetation, the local government is not authorized to issue the permit.~~] A local government shall require a permittee to use the mitigation sequence, as provided in this subsection, as a permit condition if that local government finds that an activity will result in any adverse effects on dunes or dune vegetation seaward of a dune protection line or on critical dune areas and add a permit condition that the applicant will mitigate for the adverse effects in accordance with the mitigation plan. When a mitigation plan is required, the applicant must provide landowners immediately adjacent to the tract with notice of the hearing on the permit at least 10 days prior to the hearing. Such notice to adjacent landowners may be made by sending a copy of the hearing notice by certified mail to the adjacent property owner's address listed in the county central appraisal district records. [~~When a local government requires mitigation as a permit condition, it shall require that the permittee follow the order of the mitigation sequence as provided in this subsection.~~]

(1) Avoidance. Avoidance means avoiding the effect on dunes and dune vegetation altogether by not taking a certain action or parts of an action. Local governments shall require permittees to avoid adverse effects on dunes and dune vegetation. Local governments shall not issue a permit allowing any adverse effects on dunes and dune vegetation located in critical dune areas or seaward of the dune protection line unless the applicant proves there is no practicable alternative to the proposed activity, proposed site or proposed methods for conducting the activity, and the activity will not materially weaken the dunes or dune vegetation. Local governments shall require applicants [~~permittees~~] to include information as to practicable alternatives in the permit application. Local governments shall review the permit application to determine whether the applicant [~~permittee~~] has considered all practicable alternatives and whether one of the practicable alternatives would cause no adverse effects on dunes and dune vegetation than the proposed activity. Local governments shall require applicants [~~permittees~~] to employ construction methods which will have no adverse effects, unless the applicant [~~permittee~~] can demonstrate that the use of such methods is not practicable. Local governments shall require that permittees undertaking construction in critical dune areas or seaward of a dune protection line use the following avoidance techniques.

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

(C) Location of roads. Local governments shall require permittees constructing roads parallel to beaches to locate the roads as far landward of critical dune areas as practicable and shall not allow permittees to locate such roads within 200 feet landward of the line of vegetation [~~natural vegetation line~~].

(D) (No change.)

(2) Minimization. Minimization means minimizing effects on dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. Local governments shall require that applicants [~~permittees~~] minimize adverse impacts to dunes and dune vegetation by limiting the degree or magnitude of the action and its implementation. If an applicant for a dune protection permit demonstrates to the local government that adverse effects on dunes or dune vegetation cannot be avoided and the activity will not materially weaken dunes and dune vegetation, the local government may issue a permit allowing the proposed alteration, provided that the permit contains a condition requiring the permittees to minimize adverse effects on dunes or dune vegetation to the greatest extent practicable.

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

(3) (No change.)

(4) Compensation. Compensation means compensating for effects on dunes and dune vegetation by replacing or providing substitute dunes and dune vegetation. Local governments shall require the permit holder to compensate for the adverse effects to dunes and dune vegetation at a 1:1 ratio. Compensation may be undertaken both on-site and off-site; however, off-site compensation may only be allowed as provided in subparagraph (B) of this paragraph [~~section~~].

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

(5) (No change.)

(g) (No change.)

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

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Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 475-1859

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. CLAIMS PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §§5.12 - 5.15

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

The Comptroller of Public Accounts proposes the repeal of Chapter 5, Funds Management (Fiscal Affairs), Subchapter B, Claims Processing--Electronic Funds Transfers; §5.12, concerning paying vendors through electronic funds transfers; §5.13, concerning paying state employees through electronic funds transfers; §5.14, concerning paying annuitants through electronic funds transfers; and §5.15, concerning paying governmental entities through electronic funds transfers. The existing §§5.12 - 5.15 are currently based on state payee types who receive payment by electronic funds transfer and are being repealed as duplicative rules for each type of payee. The existing §§5.12 - 5.15 are being repealed so that the content can be updated in new §§5.12 - 5.15 to reflect policy and procedure clarifications of the electronic funds transfer system. The updated rules do not contain any major substantive or procedural changes to the existing practice and procedures for an electronic funds transfer system to make payments pursuant to Government Code, §403.016.

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

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rules will be by incorporating current statutory provisions, and agency policies and procedures. The proposed repeals would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the repeals may be submitted to Phillip Ashley, Director of the Fiscal Management Division, 111 E. 17th Street, Room 914, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The repeal of Chapter 5, Funds Management (Fiscal Affairs), Subchapter B, Claims Processing--Electronic Funds Transfers are proposed under Government Code, §403.016, which provides the comptroller with the authority to adopt rules to administer the state's electronic funds transfer system.

§5.12. Paying Vendors through Electronic Funds Transfers.

§5.13. Paying State Employees through Electronic Funds Transfers.

§5.14. Paying Annuitants through Electronic Funds Transfers.

§5.15. Paying Governmental Entities through Electronic Funds Transfers.

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 November 5, 2014.

TRD-201405299
Ashley Harden
General Counsel
Comptroller of Public Accounts
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SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §§5.12 - 5.15

The Comptroller of Public Accounts proposes new §5.12, concerning processing payments through electronic funds transfers; §5.13, concerning administration of electronic funds transfers; §5.14, concerning participation in the electronic funds transfer system; and §5.15, concerning electronic funds transfers - paycards. The new sections replace the existing §§5.12 - 5.15, which are being repealed so that the content can be updated to reflect policy and procedure clarifications and update the existing content of the electronic funds transfer system.

Subchapter B which is currently titled Claims Processing--Electronic Funds Transfers and which the comptroller proposes to be retitled Payment Processing--Electronic Funds Transfers. The new rules establish administrative and procedural guidelines for the comptroller's electronic funds transfer system to make payments pursuant to the authority of Government Code, §403.016. The new rules do not contain any major substantive or procedural changes to the existing practice and procedures for an electronic funds transfer system to make payments pursuant to Government Code, §403.016.

Section 5.12 covers applicability of the rules, definitions, the approved types of electronic funds transfer system payments, compliance with applicable NACHA rules, confidentiality, audit, notification, and conflict of law.

Section 5.13 relates to general administration of the electronic funds transfer system and the roles of the comptroller, the custodial state agency, and the paying state agency and limitation of liability.

Section 5.14 relates to participation in the electronic funds transfer system. Subsection (a) relates to the state payee participation in the electronic funds transfer system. Subsection (b) covers the number of state payee accounts that may be used. Subsection (c) covers the state payee EFTS authorization. Subsection (d) covers when a payment is credited to a state payee account. Subsections (e), (f), and (g) cover reversals and reclamations of certain payments made by electronic funds transfer.

Section 5.15 relates to the use of a state paycard for state employee payroll payments by electronic funds transfer.

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

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rule will be by incorporating into the rules current statutory provisions, and agency policies and procedures. The proposed amendments would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Philip Ashley, Director of the Fiscal Management Division, Texas Comptroller of Public Accounts, 111 E. 17th Street, Room 914, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposals in the *Texas Register*.

The new sections are proposed under Government Code, §403.016, which requires the comptroller to adopt rules to administer the provisions of Government Code, §403.016, to establish and operate the Electronic Funds Transfer System.

The new sections implement Government Code, Chapter 403, Subchapter B, §403.016.

§5.12. Processing Payments Through Electronic Funds Transfers.

(a) Applicability. These rules govern EFT payments by the comptroller on behalf of custodial and paying state agencies as part of the electronic funds transfer system authorized by Government Code, §403.016.

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

(1) Automated clearing house (ACH)--A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions subject to regulation under rules of an automated clearing house association and applicable regulatory law.

(2) ACH rules--The operating rules and guidelines governing the ACH network published by NACHA, the Electronic Payments Association and applicable federal regulatory law.

(3) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(4) Comptroller approved EFTS form--An EFTS form approved by the comptroller for use by a custodial or paying state agency in the EFTS.

(5) Credit entry--A type of EFT entry that the comptroller initiates on behalf of a paying state agency to credit a state payee's EFTS account at a domestic financial institution.

(6) Custodial state agency--A state agency that establishes and maintains the state payee's account information. The custodial state agency may or may not be the paying state agency.

(7) Direct deposit--A form of EFT payment using ACH for the electronic transfer of funds directly into a state payee EFTS account at a domestic financial institution.

(8) Electronic funds transfer (EFT)--A transfer of funds which is initiated by the comptroller as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation in accordance with this subchapter. For purposes of these rules, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.

(9) EFTS authorization--A state payee's agreement to allow the comptroller to originate state-issued payments by EFT on behalf of a paying state agency to a state payee EFTS account. A state payee may provide EFTS authorization and notice under Government Code, §403.016 by:

(A) submitting an EFTS authorization with a state payee's agreement on a comptroller approved form; or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(10) EFTS form--An electronic or paper form submitted by a state payee as part of the EFTS. An EFTS form used by a custodial state agency or paying state agency is subject to comptroller approval.

(11) Electronic funds transfer system (EFTS)--A system authorized by Government Code, §403.016, that is administered by the comptroller in accordance with these rules to make EFT payments to state payees on behalf of a paying state agency.

(12) Financial institution--A state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union that complies with NACHA rules and may be an originating depository financial institution or a receiving depository financial institution.

(13) International ACH transaction (IAT)--An ACH entry involving a financial agency (as defined by NACHA rules) that is not located in the territorial jurisdiction of the United States. An international ACH transaction may be referred to as an IAT entry or IAT.

(14) NACHA--The National Automated Clearing House Association is the electronic payments association that establishes standards, rules and procedures that enable domestic financial institutions to exchange payments electronically.

(15) Notification of change (NOC)--Information sent by a financial institution through the ACH network to notify the comptroller that previously valid information for a state payee has become outdated or that information contained in a prenotification is erroneous.

(16) Originating depository financial institution--A financial institution that originates ACH entries on behalf of the comptroller and transmits ACH entries through the ACH network in accordance with NACHA rules.

(17) Originator--The comptroller acts as the originator and authorizes an originating depository financial institution to transmit,

on behalf of the state, a credit entry, reclamation, reversal, or prenotification entry to a state payee EFTS account at a domestic financial institution.

(18) Paycard--A payment card issued to a state employee that provides access to payroll funds deposited to a designated account at a domestic financial institution as part of the EFTS through the comptroller's paycard contract.

(19) Paying state agency--A state agency for which the comptroller initiates payment. The term includes the comptroller of public accounts. A paying state agency may or may not be the custodial state agency.

(20) Prenotification--A non-dollar entry sent by the comptroller through the ACH network to alert a receiving depository financial institution that a live dollar credit entry will be forthcoming and to request verification of the state payee's EFTS account information.

(21) Receiving depository financial institution--A financial institution that receives ACH entries to a state payee EFTS account.

(22) Reclamation--A request made by the comptroller in compliance with NACHA rules, to an originating depository financial institution to reclaim from a receiving depository financial institution any amounts received by a state payee after the state payee's death or legal incapacity, or the death of a beneficiary of a state payee.

(23) Regulation E--The regulations adopted by the Board of Governors of the Federal Reserve System at 12 C.F.R. Part 205, as they may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 et seq.).

(24) Reversal--An EFT entry initiated by the comptroller at the request of a paying state agency to correct an erroneous credit entry previously transmitted to a state payee EFTS account. The comptroller may initiate a reversal of an EFT payment of state employee payroll in certain limited circumstances, including a state employee's termination, retirement, or death.

(25) State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system and an institution of higher education as defined by Education Code, §61.003 other than a public junior college.

(26) State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the State of Texas.

(27) State payee EFTS account--An account at a domestic financial institution designated by a state payee for EFTS payments.

(28) Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the State of Texas treasury funds, and is payable to a state payee on behalf of a paying state agency by the comptroller or by a state agency with delegated authority to issue warrants under Government Code, §403.060. A warrant is not an approved means of electronic funds transfer as set out in subsection (c) of this section.

(29) Wire transfer--An unconditional order to a financial institution to pay a fixed or determinable amount of money to a state payee upon receipt or on a day stated in the order that is transmitted by electronic or other means. Wire transfer is not an approved means of electronic fund transfer, as set out in subsection (c) of this section.

(c) Approved types of EFTS payments.

(1) The comptroller will approve the types of EFTS payments the state may use by rule and amend the approval based upon the comptroller's procedures and current technology.

(2) EFTS payment types approved by the comptroller to a state payee EFTS account include:

(A) direct deposit, except an IAT; and

(B) paycard.

(3) Any other type of payment which is not an approved type of EFTS payment under paragraph (2) of this subsection is not considered to be an approved type of EFTS payment under these rules. Warrants, wire transfers, and IAT are not approved types of EFTS payments.

(d) Compliance with applicable NACHA rules and regulation. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable law and NACHA regulations in EFTS transactions.

(e) Confidentiality. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable confidentiality requirements under the law, including maintaining the confidentiality of financial institution account numbers and state payee social security numbers.

(f) Audit. The comptroller is subject to audit by NACHA for compliance with the NACHA rules concerning EFT transactions under this chapter. The comptroller may audit a paying or custodial state agency for compliance with applicable regulatory or NACHA rules concerning EFT transactions under this chapter. A paying or custodial state agency shall comply with an audit under this chapter.

(g) Notification.

(1) Any questions, comments, or complaints concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and these rules may be sent to the comptroller by mail to: Texas Comptroller of Public Accounts, Fiscal Management, 111 E. 17th Street, Room 911, Austin, Texas, 78711, or by email to tins.mail@cpa.state.tx.us, or at such other email address as the comptroller may designate.

(2) The comptroller may provide additional information and updates on its website regarding notification.

(3) The comptroller may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate.

(h) Conflict of law. If there is a conflict in law between any of these rules and applicable law, the applicable law shall apply. If any provision of these rules are held to be invalid, illegal, or unenforceable due to a conflict of law, it will not affect any other provisions of these rules, and the rules will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

§5.13. Administration of Electronic Funds Transfers.

(a) Role of the comptroller.

(1) General administration. As part of its general powers under Government Code, §403.011, the comptroller shall supervise, as the sole accounting officer of the state, the state's fiscal concerns

and manage those concerns as required by law, and keep and settle all accounts in which the state is interested. Under Government Code, §403.056 and §403.060 the comptroller has authority to prepare and deliver warrants, and to print and issue warrants. The comptroller has been granted further authority by Government Code, §403.016 to establish and operate an EFTS to make state payments. As part of operating the EFTS, and in accordance with Government Code, §403.016, the comptroller:

(A) may use the services of financial institutions, automated clearinghouses, and the federal government;

(B) shall approve the means of EFTS payments the state may use in accordance with Government Code, §403.016;

(C) shall approve EFTS methods and forms, and post them online as appropriate, and provide them to paying and custodial state agencies and to state payees;

(D) may revise its policies and procedures from time to time as appropriate to operate the EFTS;

(E) is authorized to act as originator, to initiate an EFT;

(F) may act upon a request from a paying state agency to initiate a reversal to correct an erroneous entry or a reclamation for payments not due in accordance with these rules;

(G) shall use the EFTS to pay:

(i) state employee salary and travel expense reimbursements;

(ii) payments to annuitants;

(iii) recurring payments to municipalities, counties, political subdivisions, special districts, and other governmental entities of this state; and

(iv) payments to persons or vendors who choose to receive payment through the EFTS:

(H) is not required to make a payment by the EFTS even if a state payee or state agency requests payment by EFT;

(I) may, when a law requires the comptroller to make a payment by warrant, issue a payment by EFT under Government Code, §403.016(g);

(J) shall issue a warrant to pay a person under the terms of Government Code, §403.016(h); and

(K) may issue a payment to a state payee by warrant in lieu of EFT pursuant to Government Code, §403.016(i).

(2) Specific procedures. As part of operating the EFTS, and in accordance with Government Code, §403.016, the comptroller:

(A) may limit the number of state payee EFTS accounts that a state payee may designate for payment by EFT;

(B) shall rely on the EFTS authorization from a custodial state agency for the distribution of EFTS payments;

(C) may cancel a state payee's participation in the EFTS without prior notice to the state payee;

(D) shall rely on an NOC from receiving depository financial institution;

(E) may require state payees to disclose any information necessary to support an EFT payment;

(F) may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate; and

(G) shall, in the case of payments issued through the ACH network that are intended to be sent to a financial institution outside of the United States, or an IAT:

(i) require the paying state agency or the custodial state agency to obtain a written confirmation from state payees whether the intended final destination of a payment or payments is a country outside of the United States, in compliance with the law, NACHA rules, and in accordance with comptroller policy;

(ii) shall rely on the custodial state agency, the paying state agency, the state payee, and the financial institution to notify state agencies, including the comptroller, of payees who confirm the intended final destination of payment or payments is a country outside of the United States; and

(iii) shall not use the EFTS to transmit an IAT payment or payments.

(b) Role of the custodial state agency.

(1) The custodial state agency is responsible for establishing and maintaining EFTS state payee account information for EFT and shall:

(A) encourage state payees to participate in the EFTS;

(B) establish and maintain the state payee's EFTS account information for EFT in the comptroller's statewide systems in a manner prescribed by the comptroller;

(C) obtain comptroller approval for a EFTS form or EFTS authorization created by the custodial state agency before it uses the EFTS form or EFTS authorization;

(D) comply with a comptroller request to withdraw or change an EFTS form or EFTS authorization;

(E) post approved EFTS forms and EFTS authorizations online and direct state payees to online tools for EFTS forms and EFTS authorizations;

(F) obtain a state payee EFTS authorization or notice under Government Code, §403.016, by submitting an EFTS authorization with a state payee's agreement on a comptroller approved form, or by obtaining an agreement between the custodial state agency and the state payee in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules;

(G) obtain a written confirmation from state payees whether the intended final destination of a payment or payments is a country outside of the United States, in compliance with the law, NACHA rules, and in accordance with comptroller policy; and

(H) retain a record of the state payee's EFTS forms or EFTS authorizations in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(2) The custodial state agency may cancel a state payee's EFTS authorization without prior notice to the state payee.

(3) The custodial state agency shall provide reasonable advance written notice to the comptroller of a regulatory requirement related to the custodial state agency's EFTS processing.

(4) The custodial state agency shall not act as an originator, as defined in these rules, unless specifically authorized to do so by the comptroller or under law.

(c) Role of the paying state agency. The paying state agency is the state agency for which the comptroller initiates payment. The paying state agency:

(1) shall encourage state payees to participate in the EFTS;

(2) shall act in accordance with any applicable laws and requirements;

(3) may provide notice to the comptroller under Government Code, §403.016(h)(2) to request payment by warrant rather than by EFT;

(4) shall obtain a written confirmation from state payees whether the intended final destination of a payment or payments is a country outside of the United States, in compliance with federal law, NACHA rules, and in accordance with comptroller policy;

(5) shall not act as an originator as defined in these rules unless specifically authorized to do so by the comptroller or under law;

(6) shall obtain comptroller approval for an EFTS form or an EFTS authorization created by the paying state agency before it uses the EFTS form or EFTS authorization;

(7) shall comply with a comptroller request to withdraw or change an EFTS form or EFTS authorization;

(8) shall post online its comptroller-approved EFTS forms and EFTS authorization, and payment information;

(9) shall provide payment reconciliation assistance to state payees upon request;

(10) shall provide payment information to the comptroller's statewide accounting system to facilitate the state payee's payment reconciliation, in accordance with comptroller policy;

(11) shall provide reasonable advance written notice to the comptroller of a regulatory requirement related to the paying state agency's EFT processing;

(12) shall obtain a written confirmation from state payees whether the intended final destination of a payment or payments is a country outside of the United States, in compliance with the law, NACHA rules, and in accordance with comptroller policy; and

(13) shall report to the comptroller any state payee or state payee's beneficiary who fails to reimburse the paying state agency for any payment amount of an unsuccessful EFTS reversal, in accordance with Government Code, §403.055(f) and (g).

(d) Limitation of liability.

(1) Notwithstanding any provision to the contrary, the comptroller is not liable for any harm, damages, attorney's fees, or costs in connection with the EFTS, including but not limited to liability arising:

(A) when a paying state agency is in noncompliance of that agency's statutes requiring mandatory EFT payment of certain payments, or fails to comply with existing law and NACHA rules;

(B) from any act or omission of a paying state agency or a custodial state agency; and

(C) when a paying state agency and/or a custodial state agency fail to notify the comptroller of a regulatory requirement.

(2) Notwithstanding any provision to the contrary, the comptroller, the paying state agency, and custodial state agency are not liable for any harm, damages, attorney's fees, or costs in connection with the EFTS, including but not limited to the following matters:

(A) arising from any act or omission of any automated clearing house, financial institution, or other person or entity;

(B) arising from the consequences of a rejection of the EFT account information by the receiving depository financial institution; and

(C) arising when an EFT payment is rejected or posted late, including any additional late payment interest, additional late fees or charges.

§5.14. Participation in the Electronic Funds Transfer System.

(a) State payee participation in electronic funds transfer system.

(1) Payee disclosure of state payee EFTS account information. The state payee must establish, change, or cancel state payee EFTS account information by providing EFTS authorization to a custodial state agency.

(2) Comptroller EFTS forms. The state payee may access the comptroller's EFTS forms on the comptroller's web site. The state payee may also access the custodial state agency's EFTS forms on the custodial state agency's web site.

(3) State payee may elect to authorize payment by EFT. A state payee may choose to receive payment by EFT by providing EFTS authorization. A state payee's choice not to provide EFTS authorization constitutes notice to the comptroller to receive payment by warrant as provided in Government Code, §403.016(h)(1).

(4) Payment destination confirmation. At the time of electing to participate in the EFTS, a state payee must confirm whether payments they receive will be forwarded to a financial institution outside of the United States. A state payee must also notify the paying state agency of any change to the intended final destination of a payment or payments outside of the United States.

(5) Refusal to accept an EFT payment. A state payee may refuse to accept an EFTS payment in accordance with the NACHA rules.

(6) Refusal of reversal. The state payee may not instruct their financial institution to reject a reversal made by the comptroller to correct an erroneous credit entry.

(7) Cancellation of state payee EFTS authorization. The cancellation of a state payee's EFTS authorization terminates the state payee's participation in the ETFS until the state payee provides a new EFTS authorization.

(8) Comptroller may issue warrant. The comptroller may issue a payment to a state payee by warrant in lieu of EFT pursuant to applicable law, including Government Code, §403.016(i).

(b) Number of EFTS accounts. The comptroller may limit the number EFTS accounts that a state payee may designate for payment by EFTS, subject to the comptroller's policy and procedure.

(c) EFTS authorization.

(1) The state payee must provide EFTS authorization to establish, change, or cancel instructions for EFT payments by providing account information by:

(A) submitting an EFT authorization with a state payee's agreement on a comptroller approved form, or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(2) Upon receipt of an EFTS authorization, the comptroller will issue a state warrant to a state payee during the time when prenotification is used to verify the account information is correct.

(3) A state payee may request to bypass prenotification by certifying to the custodial state agency that:

(A) the state payee requests to bypass prenotification;

(B) the state payee has verified the account information with the financial institution; and

(C) the state payee is solely responsible for the consequences of providing erroneous account information that may result in rejection, delay, or loss of an EFTS payment.

(4) The custodial state agency must provide written notification to the comptroller that the state payee has requested to bypass prenotification for EFT payments under paragraph (3) of this subsection.

(5) If the state payee's financial institution rejects the state payee's account information, neither the comptroller, the custodial state agency, or the paying state agency is liable for the consequences of the rejection.

(6) If the comptroller receives an EFTS authorization or other notification to cancel a state payee's account information, the state payee's participation in the EFTS terminates until the custodial state agency or the comptroller receives a new EFTS authorization from the state payee.

(7) To facilitate proper EFT payments in accordance with NACHA rules or other regulations, the comptroller may change or cancel a state payee's account information without prior notice to the state payee.

(8) The comptroller or custodial state agency may cancel a state payee's account information without prior notice to the state payee.

(d) Credit of EFTS payments.

(1) A payment is credited to a state payee EFTS account on the effective date of the credit entry regardless of when the receiving depository financial institution posts the credit.

(2) If payment is rejected or posted late by the receiving depository financial institution, the comptroller, a paying state agency, or a custodial state agency are not liable for any additional late payment interest, including under Government Code, Chapter 2251, or late fees or charges, including those that may be imposed by the state payee or receiving depository financial institution.

(e) EFTS initiation of reversals and reclamations.

(1) Only a paying state agency may request that the comptroller initiate a reversal or reclamation.

(2) A paying state agency must request a reversal or reclamation through the comptroller in the comptroller's prescribed manner.

(3) A paying state agency shall not initiate a reversal.

(4) A paying state agency shall not initiate a reclamation entry except when preauthorized by the comptroller.

(5) The comptroller may initiate a reversal for a state payroll payment only in certain limited circumstances, including termination of employment, retirement, or death.

(6) Failure to make funds available by a state payee or state payee's beneficiary for a reversal or reclamation entry initiated by the comptroller results in a debt under Government Code, §403.055.

(f) Reversal.

(1) Notice to comptroller. A paying state agency must submit to the comptroller a request for a reversal no later than five banking days after the effective date of the erroneous credit entry in accordance with comptroller procedures and NACHA rules.

(2) A receiving depository financial institution:

(A) may only accept a reversal entry from the comptroller for an erroneous credit entry initiated by the comptroller on behalf of a paying state agency; and

(B) in accordance with NACHA rules, shall not act upon instructions from the state payee to reject a reversal entry.

(3) Notice to state payee. A paying state agency must notify a state payee of a reversal entry no later than the effective date of the reversal in accordance with NACHA rules.

(4) Unsuccessful reversal entry.

(A) If the RFDI does not honor the comptroller's reversal entry, the state payee must reimburse the erroneous credit entry amount to the paying state agency.

(B) If the state payee fails to reimburse the paying state agency for the erroneous credit entry amount, the state payee will owe the amount of the erroneous credit entry as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee who fails to reimburse the paying state agency for any erroneous credit entry amounts, as required by Government Code, §403.055(f) and (g).

(g) Reclamation.

(1) A paying state agency must submit EFTS reclamation requests to the comptroller for processing within five business days of notification of the death or legal incapacity of the state payee or beneficiary of the state payee.

(2) The comptroller may initiate a reclamation request on behalf of the paying state agency to reclaim any amounts transmitted to the state payee's account after the state payee's death or legal incapacity, or the death of a beneficiary of the state payee.

(3) The comptroller must provide prior approval to allow a paying state agency to initiate a reclamation entry for a credit entry which the comptroller initiated on behalf of a paying state agency.

(4) In accordance with the NACHA rules, if the reclamation request is returned by the receiving depository financial institution, the comptroller may submit a written demand for payment of the reclamation request within fifteen days on behalf of the paying state agency.

(5) Unsuccessful reclamation entry.

(A) If the RFDI does not honor the comptroller's reclamation entry, the state payee or the state payee's beneficiary must reimburse the reclamation entry amount to the paying state agency.

(B) If the state payee or the state payee's beneficiary fails to reimburse the paying state agency for the reclamation entry amount, the state payee or the state payee's beneficiary will owe the reclamation entry amount as a debt to the state under Government Code, §403.055.

(C) A paying state agency shall report to the comptroller any state payee or state payee's beneficiary who fails to reimburse the paying state agency for any reclamation entry amounts, as required by Government Code, §403.055(f) and (g).

§5.15. Electronic Funds Transfers - Paycards.

(a) State payroll paycard.

(1) The comptroller may enter into a contract to offer state employee payroll payment using a paycard, an approved type of EFTS payment under §5.12(c) of this title (relating to Processing Payments through Electronic Funds Transfers).

(2) A paycard may be issued to a state employee that provides access to payroll funds deposited to a designated account at a domestic financial institution.

(b) Paycards are subject to Regulation E.

(c) Paycard account deposits.

(1) The state paycard account may only be used for state payroll deposits initiated by the comptroller for a specific state employee.

(2) A state employee may not use the paycard account for any deposit other than deposits of payroll payments.

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 November 5, 2014.

TRD-201405300
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.36

The Texas Department of Public Safety (the department) proposes amendments to §4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program. The proposed amendments are necessary to harmonize updates in Title 49, Code of Federal Regulations with those laws adopted by Texas

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

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

Ms. Hudson has determined that for each year of the first five-year period the amended rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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

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

The Texas Department of Public Safety, in accordance with the Administrative Procedure and Texas Register Act, Texas Government Code, §2001.001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Tuesday, December 9, 2014, at 9:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.36 regarding Commercial Motor Vehicle Compulsory Inspection Program, proposed for adoption under the authority of Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051, is affected by this proposal.

§4.36. Commercial Motor Vehicle Compulsory Inspection Program.

(a) All commercial motor vehicles registered in this state shall be required to pass an annual inspection of all safety equipment required by the Federal Motor Carrier Safety Regulations on or before the expiration of the current state inspection or vehicle inspection report [~~certificate and not later than December 31, 1994~~].

(b) All commercial motor vehicles required to be inspected under the Federal Motor Carrier Safety Regulations are also subject to the regular state inspection requirements as provided in Texas Transportation Code, Chapter 548.

(c) Effective March 1, 2015, the fee charged for commercial motor vehicle inspections may not exceed the amounts set by Texas Transportation Code, Chapter 548, and other statutorily mandated inspection fees. Fees will be collected in accordance with Texas Transportation Code, §548.504 and §548.509. [~~September 1, 2001, a fee of $50 plus a $10 Texas Emission Reduction Fee surcharge will be charged for each commercial vehicle safety inspection. An inspection station shall charge a total of $60 for each commercial vehicle safety inspection, and shall pay an advance payment, to the department, of $20 for each certificate. The department shall deposit $10 into the General Revenue Fund and $10 into the Texas Emissions Reduction Fund.~~] A unique vehicle inspection report [~~certificate~~] will be issued by certified vehicle inspection stations [~~the department~~] to designate that the vehicle has met the Federal Motor Carrier Safety Regulations and state inspection requirements.

(d) The commercial motor vehicle's vehicle inspection report [~~vehicle inspection certificate~~] will expire on the last day of the month and year following the date of issuance [~~indicated~~].

(e) Except for any appropriate grace period, a person may not operate a commercial motor vehicle registered in this state unless it is equipped, as required by the Federal Motor Carrier Safety Regulations, and the operator possesses [~~displays~~] a valid commercial motor vehicle inspection report [~~certificate~~].

(f) (No change.)

(g) Exceptions to the commercial motor vehicle safety inspection program are:

(1) - (4) (No change.)

(5) the operation of fire trucks and rescue vehicles while involved in emergency and related operations; [~~and~~]

(6) farm vehicles with a gross weight, registered weight, or gross weight rating less than 48,000 pounds (except interstate operation of more than 10,000 pounds); and[~~.~~]

(7) covered farm vehicles as defined in Title 49, Code of Federal Regulation, Part 390.5.

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 November 4, 2014.

TRD-201405266

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), proposes amendments, repeals and new rules for Chapter 108, Division for Early Childhood Intervention Services (ECI), Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter C, Staff Qualifications; Subchapter F, Public Outreach; Subchapter G, Referral, Pre Enrollment and Developmental Screening; Subchapter H, Eligibility and Evaluation and Assessment; Subchapter J, Individualized Family Service Plan (IFSP); Subchapter K, Service Delivery; and Subchapter P, Contract Requirements.

DARS proposes amendments to §108.103, concerning Definitions; §108.219, concerning Confidentiality Notice to Parents; §108.233, concerning Release of Personally Identifiable Information; §108.303, concerning Definitions; §108.309, concerning Minimum Requirements for All Direct Service Staff; §108.313, concerning Early Intervention Specialist (EIS); §108.315, concerning Service Coordinator; §108.615, Interagency Coordination; §108.707, concerning Pre-enrollment Activities; §108.801, concerning Purpose; §108.807, concerning Eligibility; §108.809, concerning Initial Eligibility Criteria; §108.811, concerning Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay; §108.813, concerning Determination of Hearing and Auditory Status; §108.815, concerning Determination of Vision Status; §108.817, concerning Eligibility Determination Based on Developmental Delay; §108.819, concerning Age Adjustment for Children Born Prematurely; §108.821, concerning Qualitative Determination of Developmental Delay; §108.825, concerning Eligibility Statement; §108.833, concerning Autism Screening; §108.1009, concerning Participants in Initial and Annual Meetings to Evaluate the IFSP; §108.1015, concerning Content of the IFSP; §108.1019, concerning Annual Meeting to Evaluate the IFSP; §108.1107, concerning Group Services; §108.1111, concerning Service Delivery Documentation Requirements; and §108.1617, concerning Transition of Contractors.

DARS proposes the repeal of §108.701, concerning Referral Requirements; §108.827, concerning Needs Assessment; §108.1001, concerning Definitions; §108.1003, concerning Individualized Family Service Plan (IFSP); §108.1005, concerning Medical Review for Early Childhood Intervention Services; §108.1013, concerning Periodic Reviews; and §108.1103, concerning Early Childhood Intervention Service Delivery.

DARS proposes new rules §108.102, concerning Legal Authority; §108.301, concerning Purpose; §108.302, concerning

Legal Authority; §108.312, concerning Licensed Practitioner of the Healing Arts (LPHA); §108.701, concerning Purpose; §108.702, concerning Legal Authority; §108.704, concerning Referral Requirements; §108.828, concerning Medical Review for Early Childhood Intervention Services; §108.835, concerning Contractor Oversight; §108.837, concerning Needs Assessment; §108.1001, concerning Purpose; §108.1002, concerning Legal Authority; §108.1003, concerning Definitions; §108.1004, concerning IFSP; §108.1017, concerning Periodic Reviews; §108.1101, concerning Purpose; §108.1102, concerning Legal Authority; and §108.1104, concerning Early Childhood Intervention Service Delivery.

BACKGROUND AND JUSTIFICATION

The changes are proposed as a result of the rule review of Chapter 108 that DARS has conducted in accordance with Texas Government Code §2001.039, which requires agency rule review every four years. DARS determined that the reasons for originally adopting all the ECI rules continue to exist. However, DARS has determined that amendments, repeals, and new rules are necessary to some subchapters to improve services to children and families. Notice of the proposed rule review of Chapter 108 was published in the October 10, 2014, issue of the *Texas Register* (39 TexReg 8079) in accordance with Texas Government Code, §2001.039, which requires agency rule review every four years. No substantive changes will occur in the program as a result of the rule changes.

SECTION-BY-SECTION SUMMARY

Subchapter A--General Rules

DARS proposes new §108.102, Legal Authority, to establish the legal authority for the subchapter in alignment with the DARS preferred rule format.

DARS proposes amendments to §108.103, Definitions, to increase clarity of the definitions of child, comprehensive needs assessment, co-visits, days, group services, IFSP, IFSP team, interdisciplinary team, LPHA, and natural environment. DARS proposes removing Licensed Specialist in School Psychology from the list of professions qualified to serve as an LPHA. A new definition for "qualifying medical diagnosis" is proposed, and paragraphs (36)-(40) are renumbered.

Subchapter B--Procedural Safeguards and Due Process Procedures

DARS proposes amendments to §108.219, Confidentiality Notice to Parents, to clarify that the ECI contractor must give the parent a copy of the Parent Handbook publication and explain the content when initially providing the publication to the family and annually thereafter.

DARS proposes amendments to §108.233, Release of Personally Identifiable Information, to increase the time limit for the consent to release information for billing records to match the DARS ECI record retention schedule.

Subchapter C--Staff Qualifications

DARS proposes new §108.301, Purpose, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes new §108.302, Legal Authority, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes amendments to §108.303, Definitions, to add a new definition for Individualized Professional Development Plan and renumber paragraphs (6)-(8).

DARS proposes amendments to §108.309, Minimum Requirements for All Direct Service Staff, to clarify that the minimum staff requirements of this rule do not apply to employees of the Local Education Agency (LEA) who might be part of the child's IFSP team, to add supervision requirements, and to clarify the types of activities that can be considered supervision.

DARS proposes new §108.312, Licensed Practitioner of the Healing Arts (LHPA), to establish the role and responsibilities of the LPHA.

DARS proposes amendments to §108.313, Early Intervention Specialist (EIS), to establish timelines for completing the credentialing requirements for becoming an EIS, training requirements for EIS supervisors, and requirements related to how long an EIS can remain inactive before having to complete the credentialing activities again.

DARS proposes amendments to §108.315, Service Coordinator, to establish training requirements for service coordinator supervisors.

Subchapter F--Public Outreach

DARS proposes amendments to §108.615, Interagency Coordination, to clarify the requirements for coordinating with the LEA and local Head Start program at the local level.

Subchapter G--Referral, Pre Enrollment and Developmental Screening

DARS proposes new §108.701, Purpose, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes new §108.702, Legal Authority, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes the repeal of current §108.701, Referral Requirements, and the proposal of new §108.704, Referral Requirements, to retain the content of current §108.701. The content of §108.701 is now located in §108.704.

DARS proposes amendments to §108.707, Pre-enrollment Activities, to clarify the requirement to explain to the parent that services will be delivered within the context of the ECI model.

Subchapter H--Eligibility, Evaluation and Assessment DARS proposes amendments to §108.801, Purpose, to clarify that the child must receive an accurate evaluation.

DARS proposes amendments to §108.807, Eligibility, to clarify that the ECI contractor must maintain complete evaluation records.

DARS proposes amendments to §108.809, Initial Eligibility Criteria, to clarify initial eligibility criteria.

DARS proposes amendments to §108.811, Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay, to add a reference to new §108.837, Medical Review for Early Childhood Intervention Services, that details the requirements of a medical review for early intervention services.

DARS proposes amendments to §108.813, Assessment of Hearing and Auditory Status, to clarify requirements related to determination of hearing and auditory status.

DARS proposes amendments to §108.815, Assessment of Vision Status, to clarify requirements related to determination vision status.

DARS proposes amendments to §108.817, Eligibility Determination Based on Developmental Delay, to clarify record keeping requirements related to evaluations, to specify that all evaluations must be accurate, to indicate that prescriptions are not needed to conduct an evaluation and clinical opinion may be used to interpret scores and determine developmental delay, and to add a requirement that an LPHA must participate on every evaluation team.

DARS proposes amendments to §108.819, Adjustment for Children Born Prematurely, to change the title to Age Adjustment for Children Born Prematurely to clarify the intent of the section.

DARS proposes amendments to §108.821, Qualitative Determination of Developmental Delay, to clarify requirements for qualitative determination of delay when a child's adjusted age is 0 months or when standardized tests do not accurately reflect the child's functional abilities.

DARS proposes amendments to §108.825, Eligibility Statement, to clarify that the eligibility statement must be completed for every child evaluated and to establish a hierarchy of eligibility criteria for children who meet ECI eligibility in multiple ways.

DARS proposes the repeal of current §108.827, Needs Assessment. The content of current §108.827 is amended and moved to new §108.837, Needs Assessment, to increase clarity and improve readability.

DARS proposes new §108.828, Medical Review for ECI, to move content from current §108.1005.

DARS proposes amendments to §108.833, Autism Screening, to require the updated Modified Checklist for Autism in Toddlers Revised (M-CHAT-R) as the tool for autism screening.

DARS proposes new §108.835, Contractor Oversight, to establish requirements for ECI contractors to have internal written procedures that establish a system of clinical oversight for eligibility determination.

DARS proposes new §108.837, Needs Assessment, to move content from current §108.827, Needs Assessment, and to clarify requirements related to child and family needs assessment.

Subchapter J--Individualized Family Service Plan (IFSP)

DARS proposes extensive restructuring and renumbering of Subchapter J, Individualized Family Service Plan, to improve readability.

DARS proposes new §108.1001, Purpose, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes new §108.1002, Legal Authority, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes the repeal of current §108.1001, Definitions, and proposed new §108.1003, Definitions, to retain the content of current §108.1001. Current §108.1001 will now be located in new §108.1003.

DARS proposes the repeal of current §108.1003, IFSP. The content of current §108.1003 is moved to new §108.1004, IFSP. Further amendments are proposed to improve readability by moving requirements in current §108.1009, Participants in Initial and Annual Meetings to Evaluate the IFSP, that are specifically related to conducting the annual meeting to evaluate the IFSP in ways other than a face-to-face meeting to new §108.1004, IFSP.

DARS proposes new §108.1004, IFSP. The content of current §108.1003 is moved to new §108.1004, IFSP. Further amendments are proposed to improve readability by moving requirements in current §108.1009, Participants in Initial and Annual Meetings to Evaluate the IFSP, that are specifically related to conducting the annual meeting to evaluate the IFSP in ways other than a face-to-face meeting to new §108.1004, IFSP.

DARS proposes the repeal of §108.1005, Medical Review for Early Childhood Intervention Services. The content of §108.1005, Medical Review for ECI Services, is moved to new §108.828, Medical Review for Early Childhood Intervention Services.

DARS proposes amendments to §108.1009, Participants in Initial and Annual Meetings to Evaluate the IFSP, to clarify the requirements of the participants of an IFSP team by moving to new §108.1004, IFSP, those requirements that are specifically related to conducting the annual meeting to evaluate the IFSP in ways other than a face-to-face meeting.

DARS proposes the repeal of §108.1013, Periodic Review. The content of current §108.1013, IFSP, is moved to new §108.1017, Periodic Review.

DARS proposes amendments to §108.1015, Content of the IFSP, to require documentation about the child outcomes in the IFSP, to require monitoring of services, to require the LPHA to sign the IFSP acknowledging that the planned services are reasonable and necessary, and to clarify IFSP requirements.

DARS proposes new §108.1017, Periodic Review, to move content from current §108.1013, Periodic Review.

DARS proposes amendments to §108.1019, Annual Meeting to Evaluate the IFSP, to add requirements about what must be discussed and documented regarding the child outcomes ratings in the annual IFSP.

Subchapter K--Service Delivery DARS proposes new §108.1101, Purpose, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes new §108.1102, Legal Authority, to establish the purpose for the subchapter in alignment with the DARS preferred rule format.

DARS proposes the repeal of current §108.1103, Early Childhood Intervention Service Delivery. The content of current §108.1103 is amended to clarify service delivery within the ECI model and is moved to new §108.1104, Early Childhood Intervention Service Delivery. The amendments also add new requirements for the interdisciplinary team to monitor services at least once every six months.

DARS proposes new §108.1104, Early Childhood Intervention Service Delivery, to move the content of current §108.1103. The content of current §108.1103 is amended to clarify service delivery within the ECI model and is moved to new §108.1104, Early Childhood Intervention Service Delivery. The amendments also add new requirements for the interdisciplinary team to monitor services at least once every six months.

DARS proposes amendments to §108.1107, Group Services, to add requirements for providing services in a group setting, including requirements that group services be planned by the interdisciplinary team and documented on the IFSP only when group services will help the child reach the IFSP outcomes, that group services be planned as part of an IFSP that also contains individual services, and that limits group size to four children and their parent per service provider.

DARS proposes amendments to §108.1111, Service Delivery Documentation Requirements, to include establish documentation requirements regarding return demonstration.

Subchapter P--Contract Requirements

DARS proposes amendments to §108.1617, Transition of Contractors, to require the contractor to provide notice at least 120 days before terminating or non-renewing a contract.

FISCAL NOTE

Rebecca Trevino, DARS Chief Financial Officer, has determined that during the first five-year period the proposal is in effect, there will be no fiscal impact to state government. The proposal will have no fiscal impact on local health and human services agencies. Local governments will not incur additional costs.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Ms. Trevino has determined that the proposal will have no effect on small businesses or micro businesses, because they will not be required to alter their business practices as a result of complying with the proposal. There are no anticipated economic costs to persons who are required to comply with the proposal. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Trevino has determined that for each year of the first five years that the proposal will be in effect, it is expected that the public will benefit by the increased clarity for ECI contractors and improved services to families receiving ECI services.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS 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, do not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Blvd., Austin, Texas, 78756; or electronically to DARSrules@state.tx.us before January 6, 2015, at 5:00 p.m.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.102, §108.103

STATUTORY AUTHORITY

The proposed amendment and new rule are being proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.102. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) Texas Human Resources Code, Chapter 117;

(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 - 1444); and

(4) implementing federal regulations 34 CFR Part 303.

§108.103. Definitions.

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

(1) Assessment--As defined in 34 CFR §303.321(a)(2)(ii), the ongoing procedures used by appropriate qualified personnel throughout the period of a child's eligibility for early childhood intervention services to assess the child's individual strengths and needs and determine the appropriate services to meet those needs.

(2) Child--An infant or toddler, from birth through 35 months, as defined in 34 CFR §303.21.

(3) Child Find--As described in 34 CFR §§303.115, 303.302 and 303.303, activities and strategies designed to locate and identify, as early as possible, infants and toddlers with developmental delay.

(4) Complaint--A formal written allegation submitted to DARS stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(5) Comprehensive Needs Assessment--Conducted by an interdisciplinary team, the [~~The~~] process for identifying a child's unique strengths and needs, and the family's resources, concerns, and priorities in order to develop an IFSP. The comprehensive assessment process gathers information across developmental domains regarding the child's abilities to participate in the everyday routines and activities of the family.

(6) Condition With a High Probability of Resulting in Developmental Delay--A medical diagnosis known and widely accepted within the medical community to result in a developmental delay over the natural course of the diagnosis.

(7) Consent--As defined in 34 CFR §303.7 and meeting all requirements in 34 CFR §303.420.

(8) Contractor--A local private or public agency with proper legal status and governed by a board of directors or governing authority that accepts funds from DARS to administer an early childhood intervention program.

(9) Co-visits--When two or more service providers deliver different services to the child during the same period of time. Co-visits are provided when a child will receive greater benefit from services being provided at the same time, rather than individually.

(10) Days--Calendar days, except for LEA services which are defined as "school days".

(11) DARS--The Texas Department of Assistive and Rehabilitative Services. The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. DARS has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. DARS has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(12) DARS ECI--The Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention Services. The state program responsible for maintaining and implementing the statewide early childhood intervention system required under the Individuals with Disabilities Education Act, Part C, as amended in 2004.

(13) Developmental Delay--As defined in Texas Human Resources Code §73.001(3) and determined to be significant in compliance with the criteria and procedures in Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment).

(14) Developmental Screenings--General screenings provided by the early childhood intervention program to assess the child's need for further evaluation.

(15) Early Childhood Intervention Program--In addition to the definition of early intervention service program as defined in 34 CFR §303.11, a program operated by the contractor with the express purpose of implementing a system to provide early childhood intervention services to children with developmental delays and their families.

(16) Early Childhood Intervention Services--Individualized early childhood intervention services determined by the IFSP team to be necessary to support the family's ability to enhance their child's development. Early childhood intervention services are further defined in 34 CFR §303.13 and §303.16 and §108.1105 of this title (relating to Capacity to Provide Early Childhood Intervention Services).

(17) ECI Professional--An individual employed by an Early Childhood Intervention Program who meets the requirements of qualified personnel as defined in 34 CFR §303.13(c) and §303.31, and who is knowledgeable in child development and developmentally appropriate behavior, possesses the requisite education and experience, and demonstrates competence to provide ECI services.

(18) EIS--Early Intervention Specialist. A credentialed professional who meets specific educational requirements established by DARS ECI and has specialized knowledge in early childhood cognitive, physical, communication, social-emotional, and adaptive development.

(19) Evaluation--The procedures used by qualified personnel to determine a child's initial and continuing eligibility for early childhood intervention services that comply with the requirements described in 34 CFR §303.21 and §303.321.

(20) FERPA--Family Educational Rights and Privacy Act of 1974, 20 USC §1232g, as amended, and implementing regulations at 34 CFR Part 99. Federal law that outlines privacy protection for parents and children enrolled in the ECI program. FERPA includes rights to confidentiality and restrictions on disclosure of personally identifiable information, and the right to inspect records.

(21) Group Services--Early childhood intervention services provided at the same time to up to four [~~multiple~~] non-related children and their parents or routine caregivers.

(22) IFSP--Individualized Family Service Plan as defined in 34 CFR §303.20. A written comprehensive treatment plan [~~of care~~] for providing early childhood intervention services and other medical, health and social services to an eligible child and the child's family when necessary to enhance the child's development.

(23) IFSP Services--The individualized early childhood intervention services listed in the IFSP that have been determined by the IFSP team to be necessary to enhance an eligible child's development.

(24) IFSP Team--An interdisciplinary team that meets the requirements in 34 CFR §303.24(b) (relating to Multidisciplinary) that works collaboratively to develop, review, modify, and approve [~~, and develops, reviews, modifies, and approves~~] the IFSP and includes the parent; the service coordinator, all ECI professionals providing services to the child, as planned on the IFSP, certified Teachers of the Deaf and Hard of Hearing, as appropriate, and certified Teachers of Students with Visual Impairments, as appropriate.

(25) Interdisciplinary Team--In addition to the definition of multidisciplinary team as defined in 34 CFR §303.24 (relating to Multidisciplinary), a team that consists of at least two ECI professionals from different disciplines and the child's parent. The team may include representatives of the LEA. Professionals on the team share a common perspective regarding infant and toddler development and developmental delay and work collaboratively to conduct evaluation, assessment, IFSP development and to provide intervention.

(26) LEA--Local educational agency as defined in 34 CFR §303.23.

(27) LPHA--Licensed Practitioner of the Healing Arts. A licensed physician, registered nurse, licensed physical therapist, licensed occupational therapist, licensed speech language pathologist, licensed professional counselor, licensed clinical social worker, licensed psychologist, licensed dietitian, licensed audiologist, licensed physician assistant, [~~licensed specialist in school psychology,~~] licensed marriage and family therapist, licensed intern in speech language pathology, or advanced practice registered nurse who is an employee or a subcontractor of an ECI Program. LPHA responsibilities are further described in §108.312 of this title (relating to Licensed Practitioner of the Healing Arts (LPHA)).

(28) Medicaid--The medical assistance entitlement program administered by the Texas Health and Human Services Commission.

(29) Natural Environments--As defined in 34 CFR §303.26, settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, includes the daily activities of the child and family or caregiver, and must be consistent with the provisions of 34 CFR §303.126.

(30) Native Language--As defined in 34 CFR §303.25.

(A) When used with respect to an individual who is limited English proficient (as that term is defined in section 602(18) of the Act), native language means:

(i) the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child; and

(ii) for evaluations and assessments conducted pursuant to 34 CFR §303.321(a)(5) and (a)(6), the language normally used

by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

(B) When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, native language means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

(31) Parent--As defined in 20 USC §1401 and 34 CFR §303.27.

(32) Personally Identifiable Information--As defined in 34 CFR §99.3 and 34 CFR §303.29.

(33) Pre-Enrollment--All family related activities from the time the referral is received up until the time the parent signs the initial IFSP.

(34) Primary Referral Sources--As defined in 34 CFR §303.303(c).

(35) Public Agency--DARS and any other state agency or political subdivision of the state that is responsible for providing early childhood intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(36) Qualifying Medical Diagnosis--A medically diagnosed condition that has a high probability of developmental delay. The list of conditions that automatically qualify a child for ECI services is available at http://www.dars.state.tx.us/ecis/resources/diagnoses.asp.

(37) [~~(36)~~] Referral Date--The date the child's name and sufficient information to contact the family was obtained by the contractor.

(38) [~~(37)~~] Routine Caregiver--An adult who:

(A) has written authorization from the parent to participate in early childhood intervention services with the child, even in the absence of the parent;

(B) participates in the child's daily routines;

(C) knows the child's likes, dislikes, strengths, and needs; and

(D) may be the child's relative, childcare provider, or other person who regularly cares for the child.

(39) [~~(38)~~] Service Coordinator--The contractor's employee or subcontractor who:

(A) meets all applicable requirements in Subchapter C of this chapter (relating to Staff Qualifications);

(B) is assigned to be the single contact point for the family;

(C) is responsible for providing case management services as described in §108.405 of this title (relating to Case Management Services); and

(D) is from the profession most relevant to the child's or family's needs or is otherwise qualified to carry out all applicable responsibilities.

(40) [~~(39)~~] Sign Language and Cued Language--As defined in 34 CFR §303.13(b)(12).

(41) [~~(40)~~] Surrogate Parent--A person assigned to act as a surrogate for the parent in compliance with the Individuals with Disabilities Education Act, Part C and this chapter.

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 November 10, 2014.

TRD-201405357
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §108.219, §108.233

STATUTORY AUTHORITY

The amendments are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.219. Confidentiality Notice to Parents.

During pre-enrollment, the contractor must give the family a copy of the DARS ECI Parent Handbook publication, which contains notice that fully informs the parent about their confidentiality rights as specified in 34 CFR §303.402. The contractor must explain the contents of the DARS ECI Parent Handbook when initially providing the publication to the family and annually thereafter. [~~The contractor is responsible for distributing the DARS ECI family rights publication to all parents and explaining requirements related to confidentiality and procedural safeguards.~~]

§108.233. Release of Personally Identifiable Information.

(a) Unless authorized to do so under 34 CFR §99.31, parental consent must be obtained before personally identifiable information is:

(1) disclosed to anyone other than officials or employees of ECI participating agencies collecting or using the information; or

(2) used for any purpose other than meeting a requirement under this chapter.

(b) A contractor may request that the parent provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(1) the parent must be informed of their right to refuse to sign the release;

(2) the release form must list the agencies and providers to whom information may be given and specify the type of information that might be given to each;

(3) the parent must be given the opportunity to limit the information provided under the release and to limit the agencies,

providers, and persons with whom information may be shared. The release form must provide ample space for the parent to express in writing such limitations;

(4) the release must be revocable at any time;

(5) the consent to release information form must have a time limit: [~~the release must be time-limited not to exceed one year; and~~]

(A) not to exceed five years after the child exits services or other applicable record retention period, as described in §108.221 of this title (relating to Records Management) for billing records; or

(B) not to exceed one year for all other consents to release information;

(6) if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

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

Filed with the Office of the Secretary of State on November 10, 2014.

TRD-201405358
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER C. STAFF QUALIFICATIONS

40 TAC §§108.301 - 108.303, 108.309, 108.312, 108.313, 108.315

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.301. Purpose.

The purpose of this subchapter is to establish requirements related to ECI staff qualifications.

§108.302. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) Texas Human Resources Code, Chapter 117;

(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 - 1444); and

(4) implementing federal regulations 34 CFR Part 303.

§108.303. Definitions.

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

(1) Criminal Background Check--Review of fingerprint-based criminal history record information.

(2) Dual Relationships--When the person providing early childhood intervention services engages in activities with the family that go beyond his or her professional boundaries.

(3) Early Intervention Specialist (EIS) Active Status--When an EIS is employed or subcontracting with a contractor and holds a current active credential.

(4) Early Intervention Specialist (EIS) Inactive Status--When an EIS is not employed or subcontracting with a contractor or does not hold a current active credential.

(5) EIS Registry--A system used by DARS ECI to maintain current required EIS information submitted by contractors. DARS ECI designates Early Intervention Specialists. The EIS credential is only valid within the Texas IDEA Part C system.

(6) Individualized Professional Development Plan (IPDP)--The training and technical assistance plan developed when a staff person begins employment at an ECI program. The IPDP can include but is not limited to orientation training, EIS credentialing activities, service coordination training, and other training or professional development required by the program or DARS ECI.

(7) [~~(6)~~] Professional Boundaries--Financial, physical and emotional limits to the relationship between the professional providing early childhood intervention services and the family.

(8) [~~(7)~~] Service Coordinator Active Status--When a service coordinator is employed or subcontracting with a contractor and is current with continuing education requirements specified by DARS ECI.

(9) [~~(8)~~] Service Coordinator Inactive Status--When a service coordinator is not employed or subcontracting with a contractor or is not current with continuing education requirements specified by DARS ECI.

§108.309. Minimum Requirements for All Direct Service Staff.

(a) The contractor must comply with DARS ECI requirements related to health regulations for all direct service staff. The contractor must comply with 34 CFR Part 85 and Texas Health and Safety Code, Chapter 81.

(b) The contractor must comply with DARS ECI requirements related to initial training requirements for direct service staff. Before working directly with children and families, all staff must:

(1) complete orientation training as required by DARS ECI. This requirement does not apply to staff employed by the LEA;

(2) hold current certification in first-aid including emergency care of seizures and cardiopulmonary resuscitation for children and infants; and

(3) complete universal precautions training.

(c) The contractor must comply with DARS ECI requirements related to continuing education requirements for direct service staff. All staff providing early childhood intervention services to children and families must maintain current certification in first aid including emergency care of seizures and cardiopulmonary resuscitation for children and infants.

(d) The contractor must verify that all newly employed staff, except staff employed by the LEA:

(1) are qualified in terms of education and experience for their assigned scopes of responsibilities;

(2) are competent to perform the job-related activities before providing early childhood intervention services; and

(3) complete orientation training as required by DARS ECI before providing early childhood intervention services.

(e) The contractor must comply with DARS ECI requirements related to supervision of direct service staff. Supervision requirements are as follows: Staff who are working on IPDP training requirements must receive 1 hour of supervision per week. Staff who have completed the IPDP and work at least 15 hours per week must receive 3 hours of supervision per quarter. Staff who have completed the IPDP and who work less than 15 hours per week must receive 2 hours of supervision per quarter.

(1) All staff members who work directly with children and families must receive supervision oversight that consists of [~~including~~] documented consultation, record review, and observation from a qualified supervisor. The intent of supervision is to provide oversight and direction to staff. Supervisor qualifications are further described in this subchapter in §§108.313(c), 108.315(c), and 108.317(c) of this title (relating to Early Intervention Specialist (EIS), Service Coordinator and Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families).

(A) Documented consultation consists of [~~includes~~] evaluation and development of staff knowledge, skills, and abilities in the context of[~~, and~~] case-specific problem solving.

(B) Record review includes a review of documentation in child records to evaluate compliance with the requirements of this chapter, and quality, accuracy, and timeliness of documentation. It also includes feedback to staff to identify areas of strength and areas that need improvement.

(C) Observation includes watching staff interactions with children and families to provide guidance and feedback and providing guidance and feedback about the observation.

(2) The contractor must verify that newly employed staff members receive documented supervision as required by DARS ECI.

(f) The contractor must follow all training requirements defined by DARS ECI.

§108.312. Licensed Practitioner of the Healing Arts (LPHA).

(a) The LPHA provides necessary clinical knowledge for the IFSP team to plan and implement individualized, goal oriented services within an interdisciplinary approach.

(b) The LPHA's responsibility is to document the child's progress towards the IFSP outcomes, recommend to the team modifications to the plan as needed, and provide re-assessments or ongoing therapy services as planned on the IFSP.

(c) A LPHA is required to sign the IFSP and in doing so acknowledges the planned services are reasonable and necessary.

(d) The LPHA provides ongoing monitoring of the IFSP, at least once every six months, to provide professional opinion as to the effectiveness of services.

§108.313. Early Intervention Specialist (EIS).

(a) The contractor must comply with DARS ECI requirements related to minimum qualifications for an EIS. An EIS must either:

(1) be registered as an EIS before September 1, 2011; or

(2) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention including three hours of semester course credit in early childhood development or early childhood special education.

(A) Forty clock hours of continuing education in early childhood development or early childhood special education completed within five years prior to employment with ECI may substitute for the three hour semester course credit requirement in early childhood development or early childhood special education.

(B) Coursework or previous training in early childhood development is required to ensure that an EIS understands the development of infants and toddlers because the provision of SST for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the coursework or training must relate to the growth, development, and education of the young child and may include courses or training in:

(i) child growth and development;

(ii) child psychology or child and adolescent psychology;

(iii) children with special needs; or

(iv) typical language development.

(b) The contractor must comply with DARS ECI requirements related to continuing education for an EIS. An EIS must complete:

(1) a minimum of 10 contact hours of approved continuing education each year; and

(2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with DARS ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS documented supervision as defined in §108.309(e) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or two years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(C) complete the most current Orientation to ECI training, as defined by DARS ECI, within three months of becoming an EIS supervisor. When new versions of the Orientation to ECI training are released, EIS Supervisors must complete the new version or the DARS ECI approved equivalent within three months of the training release date; and

(D) complete the ECI Supervisor Training, as defined by DARS ECI, within three months of becoming an EIS supervisor. When new versions of the ECI Supervisor Training are released, EIS supervisors must complete the new version or the DARS ECI approved equivalent within three months of the training release date.

(3) Staff functioning as an EIS supervisor as of March 1, 2015, must complete the current Orientation to ECI and the ECI Supervisor training by August 31, 2015.

(d) Requirements for EIS active status [~~Active Status~~] and EIS inactive status are as follows: [~~Inactive Status.~~]

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS on inactive status may not perform activities requiring the EIS active status.

(2) An EIS goes on inactive status when:

(A) the EIS fails to submit the required documentation by the designated deadline [~~or when the EIS is no longer employed by a contractor. An EIS on inactive status may not perform activities requiring the EIS active status. EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by DARS ECI. An EIS may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status. An EIS returning to active status must submit documentation of three contact hours of ethics training within the last two years~~].

(i) Orientation to ECI training must be completed within 30 days from the EIS's start date.

(ii) If an EIS is transferring from another program, the Orientation to ECI training must be completed within 30 days from the EIS's start date unless the EIS has documentation he or she has completed the current Orientation module.

(iii) All credentialing activities (Final IPDP) must be completed within a year from the EIS's start date.

(iv) Any EIS who is in the Final IPDP stage as of March 1, 2015, must complete all credentialing activities by March 1, 2016.

(B) the EIS is no longer employed by a contractor; an EIS may return to active status from inactive status by:

(i) submitting 10 contact hours of continuing education for every CPE due date that was missed while the EIS was on inactive status; and

(ii) submitting documentation of three contact hours of ethics training within the last two years.

(3) [~~(2)~~] An EIS who has been on inactive status for longer than 24 months from his or her first missed CPE submission date must complete all credentialing activities. [~~the orientation training.~~]

(4) EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by DARS ECI.

(e) The contractor must comply with DARS ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §108.319 of this title (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the contractor must complete an EIS Code of Ethics Incident Report and send a copy to DARS ECI.

§108.315. Service Coordinator.

(a) ECI case management may only be provided by an employee or subcontractor of an ECI contractor. The contractor must comply with DARS ECI requirements related to minimum qualifications for service coordinators.

(1) A service coordinator must meet one of the following criteria:

(A) be a licensed professional in a discipline relevant to early childhood intervention;

(B) be an EIS;

(C) be a Registered Nurse (with a diploma, an associate's, bachelor's or advanced degree) licensed by the Texas Board of Nursing; or

(D) hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, or human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(2) Before performing case management activities, a service coordinator must complete DARS ECI required case management training that includes, at a minimum, content which results in:

(A) knowledge and understanding of the needs of infants and toddlers with disabilities and their families;

(B) knowledge of Part C of the Individuals with Disabilities Education Act;

(C) understanding of the scope of early childhood intervention services available under the early childhood intervention program and the medical assistance program; and

(D) understanding of other state and community resources and supports necessary to coordinate care.

(3) A service coordinator must effectively communicate in the family's native language or use an interpreter or translator.

(b) A service coordinator who was employed as service coordinator by a contractor before March 1, 2012, and does not meet the requirements of subsection (a)(1) of this section may continue to serve as a service coordinator at the contractor's discretion.

(c) The contractor must comply with DARS ECI requirements related to continuing education for service coordinators. A service coordinator must complete:

(1) three contact hours of training in ethics every two years;

(2) an additional three contact hours of training specifically relevant to case management every year; and

(3) if the service coordinator does not hold a current license or credential that requires continuing professional education, an additional seven contact hours of approved continuing education.

(d) The contractor must comply with DARS ECI requirements related to supervision of service coordinators.

(1) A contractor's ECI program staff member who meets the following criteria is qualified to supervise a service coordinator:

(A) has completed the most current [~~all~~] service coordinator training as required in subsection (a)(2) of this section. When new versions of the service coordinator training are released, service coordinator supervisors must complete the new version or the DARS ECI approved equivalent within three months of the training release date;

(B) has two years of experience providing case management in an ECI program or another applicable community-based organization; and

(C) is an active EIS or holds a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development or a related field; or

(ii) an unrelated field with at least 18 hours of semester course credit in child development or human development.

(D) has completed the DARS ECI Supervisor Training within three months of becoming a service coordinator supervisor. When new versions of the ECI Supervisor Training are released, service coordinator supervisors must complete the new version or the DARS ECI-approved equivalent within three months of the training release date.

(E) Staff functioning as a service coordinator supervisor as of March 1, 2015, must complete the current Orientation to ECI and the ECI Supervisor training by August 31, 2015.

(2) The contractor must provide a service coordinator a minimum of three hours per quarter of documented supervision.

(e) Requirements for service coordinator active status and inactive status are as follows. [~~Service Coordinator Active Status and Service Coordinator Inactive Status.~~]

(1) A service coordinator may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status.

(2) A service coordinator returning to active status must submit documentation of three contact hours of ethics training within the last two years.

(3) In order to provide case management, a service coordinator who has been on inactive status for longer than 24 months must complete the orientation training, including the Family Centered Case Management module and other required initial training activities when returning to work for an ECI contractor.

(f) The contractor must comply with DARS ECI requirements related to ethics of service coordinators. Service coordinators must meet the established rules of conduct and ethics training required by their license or credential. A service coordinator who does not hold a license or credential must meet the rules of conduct and ethics established in §108.319 of this title (relating to EIS Code of Ethics).

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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Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
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SUBCHAPTER F. PUBLIC OUTREACH

40 TAC §108.615

STATUTORY AUTHORITY

The amendment is proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rule is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.615. Interagency Coordination.

(a) The purpose of interagency coordination is to enhance the contractor's child find and public awareness efforts and to coordinate with community partners to increase access to resources and services for ECI children and families.

(b) The contractor must comply with all child find and public outreach requirements in all state-level DARS ECI memoranda of understanding (MOUs) with the Texas Education Agency (TEA), Head Start and Early Head Start, Texas Department of Family and Protective Services (DFPS), and any other state agency with which DARS ECI enters into a MOU.

(c) The contractor must coordinate with LEA representatives to facilitate an effective transition from ECI to public school special education services and the LEA provision of auditory and visual impairment services. Coordination activities focus on developing [~~To facilitate families' effective transitions from ECI services to Part B services in the public schools, the contractor must coordinate with the local educational agency (LEA) representatives to achieve~~] a joint [~~shared~~] understanding of:

(1) eligibility requirements for public school services, including for Part B services;

(2) the state-level MOUs with TEA; and

(3) if applicable, MOUs with the LEAs.

(d) The contractor must coordinate with representatives from Head Start and Early Head Start to [~~To~~] ensure that families eligible for Head Start and Early Head Start have access to those services, as available. Coordination activities focus on developing [~~needed, the contractor must coordinate with the local Head Start and Early Head Start representative to achieve~~] a joint [~~shared~~] understanding of:

(1) eligibility requirements for Head Start and Early Head Start placement;

(2) the state-level MOU with Head Start and Early Head Start;

(3) referral procedures; and

(4) if applicable, the local MOU with Head Start and Early Head Start.

(e) The contractor must document coordination of ECI services with local agencies, as required by 34 CFR §303.302 and other programs identified by DARS ECI.

(f) The contractor must maintain a current list of community resources for families that includes for each resource:

(1) services provided;

(2) contact information;

(3) referral procedures; and

(4) cost to families.

(g) The contractor must document the reasonable efforts to mitigate any systemic issues with achieving the requirements of this section.

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

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SUBCHAPTER G. REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING

40 TAC §108.701

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

STATUTORY AUTHORITY

The repeal is proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.701. Referral Requirements.

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

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Sylvia F. Hardman
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40 TAC §§108.701, 108.702, 108.704, 108.707

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.701. Purpose.

The purpose of this subchapter is to establish requirements related to referral, pre-enrollment, and developmental screening.

§108.702. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) Texas Human Resources Code, Chapter 117;

(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 - 1444); and

(4) implementing federal regulations 34 CFR Part 303.

§108.704. Referral Requirements.

(a) The contractor must:

(1) accept referrals for children less than 36 months of age;

(2) document in the child's record the referral date, source, and reason for referral; and

(3) contact the family in a timely manner after receiving the referral.

(b) The contractor must follow all requirements described in this chapter when a referral is received 45 days or more before the child's third birthday.

(c) In accordance with 34 CFR §303.209(b)(iii) and §108.1207(h) (relating to Transition Planning), when a referral is received less than 45 days before the child's third birthday, the contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting. In accordance with 34 CFR §303.209, with written parental consent, if the toddler is potentially eligible for special education services:

(1) the contractor must notify the LEA; and

(2) DARS coordinates the notification to the State Education Agency.

§108.707. Pre-Enrollment Activities.

(a) Pre-enrollment begins at the point of referral, includes the following activities, and ends when the parent signs the IFSP or a final disposition is reached.

(1) The contractor must assign an initial service coordinator for the family and document the name of the service coordinator in the child's record.

(2) The contractor must provide the family the DARS ECI family rights publication and document in the child's record that the following were explained:

(A) the family's rights regarding eligibility determination and enrollment;

(B) the early childhood intervention process for determining eligibility and enrollment; and

(C) the types of early childhood intervention services that may be delivered to the child and the manner in which they may be provided.

(3) The contractor provides pre-IFSP service coordination as defined in 34 CFR §303.13(b)(11) and §303.34.

(4) The contractor must collect information on the child throughout the pre-enrollment process.

(5) The contractor must assist the child and family in gaining access to the evaluation and assessment process. The contractor:

(A) schedules the interdisciplinary initial evaluation and assessment; and

(B) prepares the family for the evaluation and assessment process.

(6) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).

[(6) The contractor must conduct the activities in this section in the parent's native language, as defined in §108.103 of this chapter (relating to Definitions), unless clearly not feasible.]

(b) The contractor must explain the requirement to provide early childhood intervention services in the natural environment to the family before eligibility determination. In addition, the contractor must explain services will address the whole child within the context of the family and services will focus on natural learning activities that increase the parent's ability to support the child's development.

(c) The contractor must determine the need for and appoint a surrogate parent in accordance with 34 CFR §303.422 and §108.213 of this title (relating to Surrogate Parents).

[(d) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures).]

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

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SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

40 TAC §§108.801, 108.807, 108.809, 108.811, 108.813, 108.815, 108.817, 108.819, 108.821, 108.825, 108.828, 108.833, 108.835, 108.837

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.801. Purpose.

The purpose of this subchapter is to establish requirements that, with parental consent:

(1) each child under the age of three who is referred for evaluation or early childhood intervention services and is suspected of having a developmental delay or disability receives an accurate and [a] timely evaluation from an interdisciplinary team; and

(2) each child determined eligible for early childhood intervention services receives:

(A) an assessment of the unique strengths and needs of that child and the identification of services appropriate to meet those needs; and

(B) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

§108.807. Eligibility.

(a) The contractor must determine that a child meets Texas eligibility requirements in order to provide early childhood intervention services to the child and family.

(b) Contractors shall apply the same eligibility criteria for all children residing in Texas. If a child is determined eligible in one area of Texas, the child remains eligible if the family moves to another part of the state until the child's annual evaluation is due.

(c) The contractor must establish a system of management oversight to ensure consistent eligibility determination.

(d) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) when determining eligibility.

(e) The contractor must maintain a complete record of evaluation activities for every child evaluated. Records must be maintained in accordance with §108.237 of this title (relating to Record Retention Period).

§108.809. Initial Eligibility Criteria.

A child must be under 36 months of age and meet initial eligibility criteria to receive early childhood intervention services. Initial eligibility is established by:

(1) documentation of a medically diagnosed condition that has a high probability of resulting in developmental delay;

(2) an auditory or visual impairment as defined by the Texas Education Agency rule at 19 TAC §89.1040 (relating to Eligibility Criteria); or

(3) a developmental delay. Each developmental area must be evaluated as defined in 34 CFR §303.321. Developmental delay is determined based on:

(A) an evaluation using [based on] a standardized tool designated by DARS that indicates [indicating] a delay of at least 25 percent [%] in one or more of the following developmental areas: communication; cognitive; gross motor; fine motor; social emotional; or adaptive; or

(B) an evaluation using [based on] a standardized tool designated by DARS that indicates [indicating] a delay of at least 33 percent [%] if the child's only delay is in expressive language; or

(C) a qualitative determination of delay, as indicated by responses or patterns that are disordered or qualitatively different from what is expected for the child's age, and significantly interfere with the child's ability to function in the environment. When the interdisciplinary team determines there is evidence that the results of the standardized tool do not accurately reflect the child's development, eligibility must be established using a supplemental protocol designated by DARS ECI. A child must meet the same eligibility standards in subparagraph (A) or (B) of this paragraph on the designated tool to qualify for a qualitative determination of delay unless the child has an adjusted age or chronological age of under 3 months.

§108.811. Eligibility Determination Based on Medically Diagnosed Condition That Has a High Probability of Resulting in Developmental Delay.

(a) To determine eligibility for a child who has a qualifying medical diagnosis the interdisciplinary team must review medical documentation to determine initial eligibility.

(b) The DARS ECI assistant commissioner approves the list of qualifying medical conditions based on prevailing medical opinion. Copies of the list of medically qualifying diagnoses can be obtained from DARS.

(c) If a review of the child's records indicates that the child has a qualifying medical condition, the evaluation team must determine and document a need for early childhood intervention services as required in §108.837 of this title (relating to Needs Assessment).

§108.813. Determination [Assessment] of Hearing and Auditory Status.

(a) As part of evaluation the interdisciplinary team must determine any need for further hearing assessment. This determination is completed by reviewing [review] the current hearing and auditory status for every child through an analysis of [the] evaluation protocol results. A screening tool may be used for a or other screening tool if the child who is eligible based on a medical diagnosis or vision impairment[, to determine any need for further hearing assessment].

(b) The contractor must refer a child to a licensed audiologist if the child has been identified as having a need for further hearing assessment and the child has not had a hearing assessment within six months of the hearing needs identification. If necessary to access a licensed audiologist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives an audiological assessment that indicates the child has an auditory impairment, the contractor must, with written parental consent, refer the child within five business days:

(1) to an otologist, an otolaryngologist, or an otorhinolaryngologist for an otological examination. An otological examination may be completed by any licensed medical physician when an otologist is not available. The child's record must include documentation that an otologist, an otolaryngologist, or an otorhinolaryngologist was not available to complete the examination; and

(2) to the LEA to complete the communication evaluation and participate in the eligibility determination process as part of the interdisciplinary team. The contractor must also refer to the LEA any child who uses amplification.

§108.815. Determination [Assessment] of Vision Status.

(a) As part of evaluation, the interdisciplinary team must determine any need for further vision assessment. This determination is completed by reviewing [review] the current vision status for every child through an analysis of [the] evaluation protocol results. A screening tool may be used for a[, or other screening tool if the] child who is eligible based on a medical diagnosis or hearing impairment. [, to determine the need for further vision assessment.]

(b) The contractor must refer a child to an ophthalmologist or optometrist if the child has been identified as having a need for further vision assessment and the child has not had a vision assessment within nine months of the vision needs identification. If necessary to access an ophthalmologist or optometrist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives a medical eye examination report that indicates vision impairment, the contractor must refer the child to the LEA and to the local office of the DARS Division for Blind Services, with parental consent and within five days of receiving the report.

(d) The referral must be accompanied by a form containing elements required by the Texas Education Agency completed by an ophthalmologist or an optometrist, or a medical physician when an ophthalmologist or optometrist is not available.

§108.817. Eligibility Determination Based on Developmental Delay.

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.321(b) (relating to Procedures for Evaluation of the Child);

(2) maintain all test protocols and other documentation used to determine eligibility and continuing eligibility for every child evaluated in the child's record;

(3) provide prior written notice to the parent when the child is determined to be ineligible for early childhood intervention services; [and]

(4) ensure that evaluations are conducted by qualified personnel;[.]

(5) ensure that evaluations are conducted without delay. Prescriptions are not needed to conduct a comprehensive evaluation; and

(6) ensure that all testing is completed accurately according to the requirements of the tool(s) designated by DARS.

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §108.809(3) of this title (relating to Initial Eligibility Criteria). An LPHA must be one of the two professionals. Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

(1) administration and accurate scoring of the standardized tool designated by DARS ECI;

(2) taking the child's history, including interviewing the parent;

(3) identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1);

(4) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs;

(5) reviewing medical, educational, and other records; and

(6) in addition to 34 CFR §303.321(b), determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment; and[.]

(7) interpreting scores and determining delay through the application of informed clinical opinion to test results.

(c) The contractor must consider other evaluations and assessments performed by outside entities when requested by the family.

(1) The contractor must determine whether outside evaluations and assessments:

(A) are consistent with DARS ECI policies;

(B) reflect the child's current status; and

(C) have implications for IFSP development.

(2) If the family does not allow full access to those records or to those entities or does not consent to or does not cooperate in evaluations or assessments to verify their findings, the contractor may discount or disregard the other evaluations and assessments performed by outside entities.

[(d) Evaluation must be based on informed clinical opinion.]

§108.819. Age Adjustment for Children Born Prematurely.

In determining the extent of developmental delay, an adjustment for children born prematurely must be applied as follows:

(1) age is adjusted for children born before 37 weeks gestation and is based on a 40-week term;

(2) the developmental age must be measured against the adjusted age rather than chronological age until the child is 18 months old; and

(3) the age adjustment cannot exceed 16 weeks.

§108.821. Qualitative Determination of Developmental Delay.

(a) Qualitative Determination of Developmental Delay is applied in two circumstances:

(1) When a child's adjusted age is 0 months, administration of the standardized tool or another protocol is not required. The interdisciplinary team, which must include an LPHA, must describe clinical findings and how those findings significantly interfere with the child's functional abilities; or

(2) When the evaluation results, which are measured using the standardized tool designated by DARS ECI, do not accurately reflect the child's development or ability to function in the natural environment, the interdisciplinary team, which must include an LPHA, documents this information in the child's record and proceeds to a qualitative determination of developmental delay;

(b) For a child with an adjusted or chronological age of greater than 0 months but less than 3 months, the interdisciplinary team, which must include an LPHA, qualitatively determines developmental delay by describing clinical findings and how those findings significantly interfere with the child's functional abilities.

(c) For a child with an adjusted or chronological age of at least 3 months, the interdisciplinary team must use the supplemental protocol designated by DARS ECI to qualitatively determine developmental delay. The developmental domains and sub-domains that can be used for qualitative determination of delay are established by DARS.

[(a) When the results of the evaluation, using the standardized tool designated by DARS ECI, do not accurately reflect the child's development or ability to function in the natural environment, the interdisciplinary team documents this in the child's record and proceeds to a qualitative determination of developmental delay.]

[(b) The interdisciplinary team must use the supplemental protocol designated by DARS ECI to determine qualitative delay.]

§108.825. Eligibility Statement.

(a) The interdisciplinary team must document eligibility decisions regarding a child on an eligibility statement containing the elements required by DARS ECI.

(b) The eligibility statement must document a medically qualifying diagnosis, a qualifying auditory or visual impairment, or the elements required by DARS ECI for a determination of developmental delay.

(c) The eligibility statement must be:

(1) completed for every child evaluated;

(2) [(1)] in the child's record; and

(3) [(2)] updated when eligibility [changes or] is re-determined.

(d) Only one eligibility type may be selected for the child:

(1) medical diagnosis;

(2) vision or hearing impairment; or

(3) developmental delay;

(e) If a child meets multiple eligibility criteria, on the eligibility statement, subsection (d)(1) takes priority over subsection (d)(2) and (3), and subsection (d)(2) takes priority over subsection (d)(3).

§108.828. Medical Review for ECI Services.

The interdisciplinary team considers the child's medical history before planning services and throughout the child's enrollment. The IFSP team must:

(1) review all pertinent medical information before developing the IFSP;

(2) request additional health information necessary to develop an appropriate plan of service;

(3) delay or adjust the implementation of any or all procedures or services until the necessary health information is obtained and reviewed;

(4) continue to review medical records that become available after enrollment; and

(5) delay or adjust the implementation of procedures or service if the health or safety of the child is in jeopardy.

§108.833. Autism Screening.

(a) Autism screening is not required if the child has been screened for autism by another entity or has been identified as having autism.

(b) The contractor does not diagnose autism.

(c) If an enrolled child is 18 months or older, the interdisciplinary team must determine if the child:

(1) has a family history of autism;

(2) has lost previously acquired speech or social skills; or

(3) exhibits a language or cognitive delay or unusual communication patterns combined with a social, emotional or behavioral concern, including repetitive or stereotypical behaviors.

(d) If the interdisciplinary team identifies any of the issues in subsection (c) of this section, a member of the team must:

(1) explain to the family the importance of early screening for autism;

(2) request and obtain written consent for the screening;

(3) complete the Modified Checklist for Autism in Toddlers Revised (M-CHAT-R) if the child is not screened by the child's licensed health care provider or is unable to receive the screening from the child's licensed health care provider in a timely manner; and

(4) complete the M-CHAT-R follow-up interview for a child who does not pass the M-CHAT-R screening.

(e) The contractor must make appropriate referrals if needs are identified. This could include:

(1) a referral to appropriate clinicians for a child who does not pass both the M-CHAT-R and the follow-up interview; and

(2) the provision of case management to assist the parent with having an autism screening done by the child's licensed health care provider if they do not consent to a screening by the contractor.

(f) The use of the M-CHAT-R screening does not take the place of the appropriate evaluation of the child required under this subchapter.

§108.835. Contractor Oversight.

Contractors must have internal written procedures that establish a system of clinical oversight for eligibility determination. Clinical oversight, which is conducted by a person with knowledge of evaluation and assessment of young children, includes ensuring that:

(1) DARS ECI eligibility criteria is applied consistently to all children evaluated;

(2) all testing is administered and scored accurately according to the requirements of the tool;

(3) all evaluations to determine eligibility are comprehensive;

(4) test scores are interpreted and determination of delay includes the application of informed clinical opinion; and

(5) eligibility decisions are fully documented in:

(A) the eligibility statement; and

(B) progress note or evaluation report.

§108.837. Needs Assessment.

(a) The interdisciplinary team, which includes the service coordinator, must conduct a comprehensive needs assessment initially and annually as part of the IFSP process. The comprehensive needs assessment must identify and document:

(1) the needs of the child in each developmental area as listed in 34 CFR 303.21(a)(1), including those identified through the evaluation and observation;

(2) the family's concerns regarding their child's development and the supports and services necessary to enhance the family's capacity to meet the developmental needs of their child;

(3) the functional abilities and unique strengths of the child; and

(4) the family's description of their resources, concerns, and priorities related to enhancing the child's development.

(b) The assessment of the child must include:

(1) a review of the results of the child's evaluation;

(2) observation of the child; and

(3) the identification of the child's needs in each of the developmental areas listed in 34 CFR §303.21(a)(1).

(c) The contractor must offer to conduct a family-directed assessment and comply with all requirements in 34 CFR §303.321(c) (relating to Procedures for assessment of the child and family) to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. The family-directed assessment must:

(1) be voluntary on the part of each family member participating in the assessment; and

(2) be based on information obtained through the assessment tool and also through an interview with those family members participating in the assessment.

(d) Providers must assess and document the child's progress and needs of the family on an ongoing basis.

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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40 TAC §108.827

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

STATUTORY AUTHORITY

The repeal is proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.827. Needs Assessment.

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

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SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

40 TAC §§108.1001, 108.1003, 108.1005, 108.1013

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

STATUTORY AUTHORITY

The repeals are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The repeals are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1001. Definitions.
§108.1003. IFSP.
§108.1005. Medical Review for Early Childhood Intervention Services.
§108.1013. Periodic Reviews.

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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40 TAC §§108.1001 - 108.1004, 108.1009, 108.1015, 108.1017, 108.1019

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1001. Purpose.

The purpose of this subchapter is to establish requirements related to IFSPs.

§108.1002. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) Texas Human Resources Code, Chapter 117;

(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 - 1444); and

(4) implementing federal regulations 34 CFR Part 303.

§108.1003. Definitions.

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

(1) Frequency--The number of days or sessions that a service will be provided within a specified period of time.

(2) Functional Ability--A child's ability to carry out meaningful behaviors in the context of everyday living, through skills that integrate development across domains.

(3) IFSP Outcomes--Statements of the measurable results that the family wants to see for their child or themselves.

(4) Intensity--The length of time a service is provided during a session expressed as a specific amount of time instead of a range.

(5) Method--If the service is delivered in a group or on an individual basis.

(6) Periodic Review--As defined in 34 CFR §303.342(b), a review by the IFSP team, based on the assessment of the child, that results in approval of or modifications to the IFSP.

§108.1004. IFSP.

(a) The IFSP team must develop a written initial IFSP during a face-to-face meeting with the family in accordance with 20 USC §1436 and 34 CFR §§303.340 - 303.346.

(b) The annual meeting to evaluate the IFSP may be conducted by means other than a face-to-face meeting if:

(1) approved by the parent; and

(2) the contractor has a plan approved by DARS for conducting annual meetings to evaluate the IFSP by means other than a face-to-face meeting when appropriate for the child and family and approved by the parent, in which case the contractor must document how the most recent observations and conclusions of the LPHA conducting the re-evaluation were communicated and incorporated into the IFSP.

(c) The parent must be informed of his or her choices for conducting the annual meeting.

(d) The IFSP must be developed based on evaluation and assessment described in 34 CFR §303.321 and Subchapter H of this chapter (relating to Eligibility, Evaluation, and Assessment). The IFSP must address the developmental needs of the child and the case management

needs of the family as identified in the comprehensive needs assessment, unless the family declines to address a specified need.

(e) The contractor must deliver early childhood intervention services according to the IFSP.

(f) The IFSP team must complete a periodic review of the IFSP at six-month intervals as required in 20 USC §1436 and 34 CFR §303.342.

(g) The IFSP team must conduct an annual meeting to evaluate the IFSP as required in 34 CFR §303.342, or more frequently if the parent requests.

(h) Documentation in the child's record must reflect compliance with all related state and federal requirements.

(i) The contractor must provide the parent with a copy of the IFSP, as required in §108.223(d) of this chapter (relating to Fees for Records) and maintain the original IFSP in the child's record.

(j) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due Process Procedures) during the IFSP process.

§108.1009. Participants in Initial and Annual Meetings to Evaluate the IFSP.

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a) (relating to IFSP Team meeting and periodic review).

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted by an interdisciplinary team that includes, [~~face-to-face with~~] at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one of the two ECI professionals must be a service coordinator.

(2) At least one of the two ECI professionals must be an LPHA.

(3) At least one ECI professional attending the meeting must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional. If the LPHA attending the IFSP meeting is not an LPHA who conducted the evaluation, the contractor must ensure that [~~document how~~] the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(4) Other team members may participate by other means acceptable to the team.

[~~(5) The annual meeting to evaluate the IFSP may be conducted by means other than a face-to-face meeting if:~~]

[~~(A) approved by the parent; and~~]

[~~(B) the contractor has a plan approved by DARS for conducting annual meetings to evaluate the IFSP by means other than a face-to-face meeting when appropriate for the child and family and approved by the parent in which case the contractor must document how the most recent observations and conclusions of the LPHA conducting the re-evaluation were communicated and incorporated into the IFSP.~~]

[~~(6) Parents must be informed of their choice regarding how the annual meeting is conducted.~~]

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family including STAR, STAR+PLUS, or STAR Health Medicaid managed care.

§108.1015. Content of the IFSP.

(a) The IFSP team must develop a written IFSP containing all requirements in 20 USC §1436(d) and 34 CFR §303.344 (relating to Content of an IFSP). The IFSP must include the standardized IFSP Services Pages and the required elements designated by DARS ECI, including:

(1) a description of the child's present levels of development, including:

(A) information about the child's participation in the family's typical routines and activities;

(B) the child's strengths;

(C) the child's developmental needs; [~~and~~]

(D) the family's concerns and priorities; and[~~.~~]

(E) the child's functional abilities identified with codes for establishing the child outcome ratings, described in §108.1307 of this chapter (regarding Child Outcomes).

(2) a description of the case management needs of the family;

(3) measurable outcomes that:

(A) address the child's and family's needs which were identified during pre-enrollment, evaluation, and assessment; and

(B) address [~~are intended to enhance~~] the child's functional developmental skills by describing targeted participation [~~and ability to participate~~] in everyday family and community routines and activities;

(4) services to:

(A) address the outcomes in the IFSP;

(B) enhance the child's functional abilities, behaviors and routines; and

(C) strengthen the capacity of the family to meet the child's unique needs;

(5) the discipline of each provider for every service planned; and

(6) the name of the service coordinator.

(b) All IFSP services must be monitored to assess child progress by the interdisciplinary team as described in §108.1017 of this chapter (relating to Periodic Reviews). If the team determines that Specialized Skills Training (SST) is necessary, the team must ensure interdisciplinary monitoring of the SST and of child progress in accordance with §108.501 of this chapter (relating to Specialized Skills Training (Developmental Services)) by planning in the IFSP:

(1) regularly occurring service by the LPHA; or

(2) re-assessment by the LPHA at least every six months.

(c) If the IFSP team determines co-visits are necessary, the IFSP team must:

(1) list each service on the IFSP; and

(2) document in the IFSP a justification of how the child and family, will receive greater benefit from the services being provided at the same time.

(d) If providing services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must follow the requirements in §108.1016 of this chapter (relating to Planning for Services to be Delivered with the Routine Caregiver). [~~document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver.~~]

(e) If the IFSP team determines group services are necessary:

(1) the group services must be planned in an IFSP that also contains individual IFSP services; and

(2) the planned group services must be documented in the child's IFSP.

(f) If the IFSP team determines that an IFSP outcome cannot be achieved satisfactorily in a natural environment, the IFSP must contain a justification as to why an early childhood intervention service will be provided in a setting other than a natural environment, as determined appropriate by the parent and the rest of the IFSP team.

(g) The contents of the IFSP must be fully explained to the parent.

(h) The contractor must obtain the parent's signature on the IFSP services page. The parent's signature on the IFSP services page serves as written parental consent to provide the IFSP services. The written parental consent is valid for up to one year or until the IFSP team changes the type, intensity, or frequency of services. The contractor must not provide IFSP services without current written parental consent.

(i) The contractor must obtain, on the IFSP services page, the dated signatures of every member of the IFSP team as defined in §108.103(24) of this chapter (relating to Definitions). The IFSP must be signed by the LPHA on the team to acknowledge the planned services are reasonable and necessary.

(j) The contractor must provide the parent a copy of the signed IFSP.

(k) Any time the contractor assigns a new service coordinator, the following must be documented and attached to the IFSP:

(1) the name of the new service coordinator;

(2) the date of the change; and

(3) the date the family was notified of the change and the method of notification.

§108.1017. Periodic Reviews.

(a) Each periodic review must be conducted by individuals who meet the requirements in 34 CFR §303.343(b) (relating to IFSP Team meetings and periodic reviews) and be completed in compliance with 34 CFR §303.342(b) (relating to Procedures for IFSP development, review, and evaluation). The periodic review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(b) Additionally, the child's record must contain documentation of all IFSP team members' participation in the periodic review. Participation in the periodic review may be accomplished by a team member attending the meeting face-to-face or by telephone or by providing input and information in advance of the meeting. If a team member participates by means other than a face-to-face meeting, the team member must give the service coordinator his or her most recent observations and conclusions about the child. The team member must document in the child's record how this information was communicated to the service coordinator. If the team member is an LPHA who is not providing ongoing services to the child, he or she must have assessed the child within the previous 30 days.

(c) A periodic review is required at least every six months.

(d) Additional periodic reviews of the IFSP are conducted more frequently than six-month intervals if requested by the parent or other IFSP team members.

(e) The periodic review of the IFSP consists of the following actions, which must be documented in the child's record and be provided to the parent:

(1) a review of the child's progress toward meeting each outcome on the IFSP and the child's functional abilities related to the outcome;

(2) a review of the current developmental needs of the child and the needs of the family related to their ability to meet the developmental concerns and priorities;

(3) a review of the case management needs of the child and the family;

(4) the development of new outcomes or the modification of existing outcomes, as appropriate, that must be dated and attached to the IFSP; and

(5) the reasons for any modification to the plan or the rationale for not changing the plan.

(f) If the IFSP team adds transition steps and services as part of the periodic review, the team must follow the requirements in §108.1207(d) of this chapter (relating to Transition Planning).

(g) If the team determines that changes to the type, intensity, or frequency of services are required:

(1) the team completes a DARS required IFSP Services Page and provides a copy to the parent;

(2) the team must document the rationale for:

(A) a change in intensity or frequency of a service;

(B) the addition of a new service; or

(C) the discontinuation of a service; and

(3) the contractor must continue to provide all planned early childhood intervention services not affected by the change while the IFSP team develops the IFSP revision and gathers all required signatures.

(h) If services remain the same, the documentation must describe the rationale for making no changes and for recommending continued services.

(i) If new outcomes are developed, the documentation must be provided to the parent.

(j) A change of service coordinator does not require a periodic review.

§108.1019. Annual Meeting to Evaluate the IFSP.

(a) The annual meeting to evaluate the IFSP is conducted [~~done~~] following determination of continuing eligibility. In addition to all requirements in 34 CFR §303.342 (relating to Procedures for IFSP development, review, and evaluation), the documentation of an Annual Meeting to Evaluate the IFSP must meet the requirements for Complete Review and include a documented team discussion of:

(1) a current description of the child including:

(A) reviews of the current evaluations and other information available from ongoing assessment of the child and family needs;

(B) health, vision, hearing, and nutritional status; and

(C) present level of development related to the three annual child outcome ratings found in §108.1301 of this chapter (relating to Child Outcomes) including:[;]

(i) the functional abilities and strengths of the child;

(ii) the developmental needs of the child; and

(iii) the family priorities regarding the child's development.

(2) progress toward achieving the IFSP outcomes; and

(3) any needed modification of the outcomes and early childhood intervention services.

(b) Services provided under an IFSP that has not been evaluated and is not based on a current evaluation and current assessment of needs are not fully approved ECI services.

(1) If the contractor is at fault, DARS may disallow and recoup expenditures.

(2) If the parent has not consented to or has not cooperated with the re-determination of eligibility, the contractor must follow the procedures in §108.807 of this title (relating to Eligibility).

(3) If the parent fails to consent or fails to cooperate in necessary re-evaluations or re-assessments, no developmental delay or needs may be legitimately determined. The contractor must send prior written notice that the child has no documented current delay or no documented current needs at least 14 days before the contractor discontinues services on the IFSP, unless the parent:

(A) immediately consents to and cooperates with all necessary evaluations and assessments; and

(B) consents to all or part of a new IFSP.

(c) The parent retains procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing pursuant to §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

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 November 10, 2014.

TRD-201405366
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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SUBCHAPTER K. SERVICE DELIVERY

40 TAC §§108.1101, 108.1102, 108.1104, 108.1107, 108.1111

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1101. Purpose.

The purpose of this subchapter is to establish requirements related to ECI service delivery.

§108.1102. Legal Authority.

The following statutes and regulations authorize or require the rules in this subchapter:

(1) Texas Human Resources Code, Chapter 73;

(2) Texas Human Resources Code, Chapter 117;

(3) the Individuals with Disabilities Education Act, Part C (20 USC §§1431 - 1444); and

(4) implementing federal regulations 34 CFR Part 303.

§108.1104. Early Childhood Intervention Services Delivery.

(a) Early childhood intervention services needed by the child must be initiated in a timely manner and delivered as planned in the IFSP. Only qualified staff members, as described in Subchapter C of this chapter (relating to Staff Qualifications) are authorized to provide early childhood intervention services.

(b) The contractor must ensure that early childhood intervention services are appropriate, as determined by the IFSP team, and based on scientifically based research, to the extent practicable. In addition to the requirements in 34 CFR §303.13, all early childhood intervention services must be provided:

(1) according to a plan and with a frequency that is individualized to the parent and child to effectively address the outcomes established in the IFSP; and

(2) in the presence of the parent or other routine caregiver, with an emphasis on enhancing the family's capacity to meet the developmental needs of the child.

(c) Early Intervention services must:

(1) address the development of the whole child within the framework of the family;

(2) enhance the parent's competence to maximize the child's participation and functional abilities within daily routines and activities; and

(3) be provided in the context of natural learning activities in order to assist caregivers to implement strategies that will increase child learning opportunities and participation in daily life.

(d) The contractor must provide a service coordinator and an interdisciplinary team for the child and family throughout the child's enrollment.

(e) The contractor must make reasonable efforts to provide flexible hours in programming in order to allow the parent or routine caregiver to participate.

(f) The contractor must comply with all requirements in Subchapter B of this chapter (relating to Procedural Safeguards and Due

Process Procedures) when planning and delivering early childhood intervention services.

(g) Services must be monitored by the interdisciplinary team at least once every six months to determine:

(1) what progress is being made toward achieving outcomes;

(2) if services are reducing the child's functional limitations, promoting age appropriate growth and development, and are responsive to the family's identified goals for the child; and

(3) whether modifications to the plan are needed.

(h) Monitoring occurs as part of the IFSP review process and must be documented in the case record.

§108.1107. Group Services.

(a) Group services must be:

(1) recommended by the interdisciplinary team and documented on the IFSP only when participating in the group will assist the child to reach the outcomes in the IFSP;

(2) planned as part of an IFSP that also contains individual services; and

(3) limited to no more than four children and their parent(s) or other routine caregiver(s) per service provider.

(b) When early childhood intervention services are provided in a group setting, the parent or other routine caregiver must participate in group services.

§108.1111. Service Delivery Documentation Requirements.

Documentation of each service contact must include:

(1) the name of the child;

(2) the name of the ECI contractor and the name and the discipline of the service provider;

(3) the date, start time, length of time, and place of service;

(4) method (individual or group);

(5) a description of the techniques [~~methods~~] by which the provider engaged the family or routine caregiver in activities to meet the developmental needs of the child. This includes:

(A) coaching and instructions to the family or caregiver;

(B) discussing how activities apply to child and family routines; and

(C) modeling intervention techniques within everyday learning opportunities, including a description of the opportunity for the caregiver's return demonstration;

(6) the IFSP outcome that was the focus of the intervention;

(7) the child's [~~responses and~~] progress related to the outcomes in the IFSP;

(8) relevant new information about the child provided by the family or other routine caregiver; and

(9) the service provider's signature.

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 November 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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40 TAC §108.1103

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

STATUTORY AUTHORITY

The repeal is proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1103. Early Childhood Intervention Services.

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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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER P. CONTRACT REQUIREMENTS

40 TAC §108.1617

STATUTORY AUTHORITY

The amendment is proposed under the authority of the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The rule is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1617. Transition of Contractors.

(a) Unless prohibited by law, a contractor must provide at least 120 [~~90~~] days' notice before terminating or non-renewing a contract to provide adequate time for DARS to provide statewide coverage by securing a new contractor.

(b) During the transition to the new contractor, the existing contractor must:

(1) continue to provide services to families;

(2) continue to cooperate with DARS;

(3) continue to participate in Texas Health and Human Services Commission's Random Moment Time Study;

(4) continue to file Medicaid Administrative Claims as appropriate;

(5) continue to bill other funding sources; and

(6) assist with the transition of families and children, including the secure transfer of all client files, to the new contractor(s);

(c) Unless prevented by law, or unless as a result of an adverse action on the contract, DARS will provide at least 90-days' notice before nonrenewing a contract.

(d) In order to provide statewide coverage as required by IDEA Part C, DARS may employ an exception to a competitive procurement in the case of a contract termination for which a competitive procurement to replace the contractor is not practical to avoid a significant risk to services to children and families.

(e) DARS may employ an exception to a competitive procurement when a contractor's enrollment falls to a level that creates a financial risk to DARS.

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 November 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

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SUBCHAPTER N. FAMILY COST SHARE SYSTEM

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes the repeal and replacement of §108.1431, concerning DARS ECI Sliding Fee Scale, and new §108.1432, concerning DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015.

BACKGROUND AND JUSTIFICATION

ECI provides supports and services to families with children birth to 36 months with developmental delays or disabilities. The program supports families to help their children reach their potential through developmental services. The program provides services in all Texas counties through contracts with 50 local agencies and organizations and employs professionals who have knowledge and experience working with infants and toddlers and their families.

DARS' role is that of lead agency, while ECI contractors act as subrecipients to implement the state's Individuals with Disabilities Education Act (IDEA) Part C requirements. ECI contractors are responsible for fulfilling federal requirements related to child find, interagency coordination, comprehensive evaluation (eligibility determination) and assessment, service coordination, the full array of early childhood intervention services based upon child and family need, and services to support the family's transition from ECI services to special education or other appropriate community services.

IDEA Part C regulations allow states to establish a system of payments to sustain the ECI program. Title 40 Texas Administrative Code, Chapter 108, Division for Early Childhood Intervention Services, Subchapter N, Family Cost Share System, establishes the Texas ECI system of payments requirements. These rules promote the collection of public insurance (Medicaid, CHIP, TRICARE), private insurance, and out-of-pocket payments from parents (including payment for insurance deductibles, co-pays, co-insurance, and the cost of services not fully covered by insurance). The maximum out-of-pocket payment that a contractor can charge a family for services received in any given month is determined by their placement on a sliding fee scale that is based on family size and adjusted income.

Pursuant to DARS Rider 31, *Early Childhood Intervention Family Cost Share,* Article II of 83(R) SB 1, General Appropriations Act, DARS adopted amendments to 40 TAC §108.1413 DARS ECI Sliding Fee Scale, to require higher income families to pay a larger amount for their early childhood intervention services. The changes to the DARS ECI Sliding Fee Scale require families with adjusted income greater than 400 percent of the federal poverty level to pay the full cost of services, not to exceed 5 percent of the family's adjusted income. The amendments were adopted effective September 1, 2013. DARS delayed implementation until January 1, 2014, to give families time to adjust to the change and to allow DARS ECI contractors time to adjust systems and communicate with families.

DARS is proposing further amendments to the sliding scale to distribute incremental increases across income brackets on the sliding scale and to simplify administration by expressing the applied percentage as a set dollar amount for all income ranges. DARS proposes that the sliding scale assign a flat dollar amount to each income range based on a fixed percentage (ranging from 0.25 to 5 percent) of the mid-point of the income range based on the US Health and Human Services Federal Poverty Levels for 2014.

SECTION-BY-SECTION SUMMARY

Specifically, DARS proposes the repeal of current §108.1431, DARS ECI Sliding Fee Scale, and its replacement with new proposed §108.1431, DARS ECI Sliding Fee Scale, to:

repeal requirements related to maximum charges for families enrolled before January 1, 2014; these families will sign new family cost share agreements on or before January 1, 2015, during their annual Individualized Family Service Plan review (IFSP);

increase the out-of-pocket maximum charge for families below 400 percent of the federal poverty level; and

add more income brackets that gradually increase the family's maximum charge by small incremental amounts (families with higher adjusted incomes pay more of the cost of the ECI ser-

vices) for families who enroll in ECI on or after September 1, 2015.

DARS proposes new §108.1432, DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015, to maintain current maximum charges for families who enroll in ECI between January 1, 2015, and September 1, 2015, until the parent signs a new family cost share agreement at the annual IFSP review.

The increased charges will not go into effect until September 1, 2015 in order to allow the contractors time to implement strategies that will ensure a seamless transition to the new sliding fee scale. The contractors will need to change automated billing systems, train staff, inform families and primary referral sources about the changes, and print and disseminate related publications and materials.

During the development process, DARS shared the proposed changes to the sliding scale with staff from legislative leadership offices, including Senate Health and Human Services and House Appropriation committees and received their support.

FISCAL NOTE

Rebecca Trevino, DARS chief financial officer, has determined that for each year of the first five years that the proposed repeal and proposed new rules will be in effect, there are no foreseeable fiscal implications to state government in terms of additional cost to the state, nor will there be a negative impact to the federal funding Maintenance of Effort requirements. DARS will adopt a new maximum out-of-pocket sliding scale for families that will reduce the operating costs of the state while increasing the costs to the families, which will result in a net neutral impact to the program. The state savings is estimated to be $807,922 in the first year, fiscal year 2016, and the reduction in state costs is anticipated to continue in fiscal years 2017 through 2020 at an estimated amount of $1,491,456, per year. The proposed repeal and proposed new rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs. The persons who must comply with the proposed repeal and proposed new rules have systems in place to accommodate the new rules.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Ms. Trevino has also determined that the effect on small businesses or micro-businesses to comply with the proposed repeal and proposed new rules is as yet unknown. The entities that must comply with this rule proposal have systems in place to accommodate the proposed repeal and proposed new rules and will not be required to add new activities and requirements to their business practices. As a result of the rule changes, contractors will modify current billing systems, train staff, and communicate with families currently in the system. The economic costs to persons who are required to comply with the proposed repeal and proposed new rules are as yet unknown.

PUBLIC BENEFIT

Ms. Trevino has determined that for each year of the first five years that the proposed repeal and proposed new rules will be in effect, it is expected that the public will benefit by being assured that the necessary rules are in place to provide a clear and concise understanding of the services provided by ECI.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that the proposed repeal and proposed new rules do 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 proposed repeal and proposed new rules may be submitted to the Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Austin, Texas 78756; or electronically to DARSrules@state.tx.us by January 6, 2015, at 5:00 p.m.

40 TAC §108.1431

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

STATUTORY AUTHORITY

The repeal is proposed under the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The repeal is proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1431. DARS ECI Sliding Fee Scale.

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 November 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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40 TAC §108.1431, §108.1432

STATUTORY AUTHORITY

The new rules are proposed under the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The new rules are proposed pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§108.1431. DARS ECI Sliding Fee Scale.

(a) The contractor must provide the family with a copy of the DARS ECI sliding fee scale. Based on family size and income, placement on the DARS ECI sliding fee scale determines the family's maximum charge for services received in one calendar month.

(b) The DARS ECI sliding fee scale assigns a set dollar amount as the maximum charge for adjusted income ranges less than or equal to 1000 percent of the federal poverty level. DARS calculates the maximum charge for each income range by applying a fixed percentage (ranging from 0.25 to 5 percent) to the mid-point income within each range based on the US Health and Human Services Federal Poverty Levels for 2014, as published in the January 24, 2014 edition of the *Federal Register.*

(c) For children and families who enroll in ECI services on or after September 1, 2015, the family's maximum charge shall be pursuant to Figure: 40 TAC §108.1431(c) identified in this subsection:
Figure: 40 TAC §108.1431(c)

§108.1432. DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015.

For children and families enrolled in ECI services before September 1, 2015, the family's maximum charge shall be pursuant to the figure located in this section until the family's annual IFSP review. Thereafter, the family's maximum charge shall be pursuant to the figure located in §108.1431 of this chapter (relating to DARS ECI Sliding Fee Scale). This section shall expire on August 31, 2016.
Figure: 40 TAC §108.1432

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 November 10, 2014.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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CHAPTER 109. OFFICE FOR DEAF AND HARD OF HEARING SERVICES
SUBCHAPTER C. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

40 TAC §§109.501, 109.503, 109.505, 109.507, 109.509, 109.511, 109.513, 109.515, 109.517, 109.521, 109.523, 109.525, 109.527, 109.529, 109.531, 109.533

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), proposes to amend Subchapter C, Specialized Telecommunications Assistance Program "STAP", §109.501, concerning Purpose; §109.503, concerning Legal Authority; §109.505, concerning Definitions; §109.507, concerning Determination of Basic Specialized Telecommunications Equipment or Service; §109.509, concerning Preliminary and Comprehensive Assessment; §109.511, concerning Voucher Recipient Eligibility; §109.513, concerning Persons Authorized to Certify Disability; §109.515, concerning Vouchers; and §109.517, concerning, Determination of Voucher Category Value and Eligibility Criteria for a Voucher; and to add new rules §109.521, concerning Determination of Approved Equipment or Services; §109.523, concerning Reimbursement Amounts for Approved Equipment or Services; §109.525, concerning STAP Vendor Eligibility Requirements; §109.527, concerning STAP Vendor Duties and Responsibilities; §109.529, concerning Voucher Reimbursement; §109.531, concerning Suspension or Loss of STAP Vendor Eligibility; and §109.533, concerning Reinstatement of STAP Vendors.

BACKGROUND AND JUSTIFICATION

STAP is funded through the Texas Universal Service Fund (TUSF), which is administered by the Public Utility Commission of Texas (PUC). STAP provides financial assistance to Texans whose disability interferes with their ability to access the telephone network by issuing vouchers for the purchase of basic specialized telecommunications equipment or services. STAP applicants who receive vouchers from DARS select an approved STAP vendor and exchange their vouchers for authorized specialized telecommunications equipment or services. The STAP vendor then delivers the equipment to the STAP applicant, and the equipment becomes the property of the STAP applicant. There were 18,858 STAP vouchers issued in fiscal year 2014. DARS uses a third-party contractor, Solix, to enroll and reimburse STAP vendors. In 2014, Solix reimbursed STAP vendors $6.5 million for equipment.

The amendments and new rules are being proposed as the result of S.B. 512, 83rd Legislature, Regular Session, 2013, which transferred STAP reimbursement responsibilities from the PUC to DARS. Prior to this transfer, DARS' statutory authority covered STAP responsibilities only relating to the consumer, equipment and services, and STAP voucher issuance. Since PUC rules regarding the registration and reimbursement of STAP vendors became enforceable by DARS under S.B. 512, DARS is proposing these new rules to replace the PUC rules. Once these proposed amendments and new rules are adopted, it is expected that PUC will repeal its STAP rules. S.B. 512 made other changes, such as updating statutory language to replace references to the legacy Texas Commission for the Deaf and Hard of Hearing. DARS also proposes the addition of definitions and clarifying terminology to better reflect STAP operations.

In preparing these proposed amendments and new rules, DARS held four public meetings during February 2014 in McAllen, Houston, Austin, and Dallas, to solicit public comment on the current program and on proposed modifications to STAP. During the public meetings, consumers expressed concern regarding the difficulty of finding a STAP vendor who sells wireless de-

vices. In addition, several STAP vendors raised the issue of charging additional fees to earn a profit on wireless devices that must be purchased at cost. Major wireless companies have not shown interest in becoming STAP vendors, and as a result, STAP vendors must purchase wireless devices from wireless companies at cost and then charge consumers additional fees to recover those costs to earn a profit. This method has led to inequitable pricing variations, which is confusing to STAP applicants and STAP vendors. The proposed rules provide for reasonable reimbursement amounts for approved equipment to be posted on the DARS website for 45 days for comment. Comments received will be considered by DARS in determining the reimbursement amounts and implementing this proposed rule will address challenges facing STAP vendors and improve consumer access to wireless devices.

SECTION-BY-SECTION SUMMARY

DARS proposes to amend §109.501, Purpose, by introducing acronyms used throughout the rule.

DARS proposes to amend §109.503, Legal Authority, by using acronyms.

DARS proposes to amend §109.505, Definitions, by adding new definitions for the approved equipment or service, acronyms for DARS and DHHS, entity, reimbursement amount, STAP, STAP contractor, STAP vendor, TUSF, voucher category, and voucher category value. In addition, DARS proposes amendments to clarify definitions for application, basic specialized telecommunications equipment, basic specialized telecommunications service, financial assistance, resident, STAP vendor, and voucher.

DARS proposes to amend §109.507, Determination of Basic Equipment or Service, by changing the section title to "Determination of Basic Specialized Telecommunications Equipment or Service," and by clarifying the equipment and service types covered by STAP. In addition, DARS proposes amendments to clarify that DARS DHHS is the DARS office responsible for implementing this section.

DARS proposes to amend §109.509, Preliminary and Comprehensive Assessment, by adding DARS DHHS as the identifying agency and updating terminology to replace the word "device" with the word "equipment."

DARS proposes to amend §109.511, Eligibility, by changing the section title to read "Voucher Recipient Eligibility." Paragraphs were also added to detail safeguards for STAP applicants who return vouchers, return equipment or stop services.

DARS proposes to amend §109.513, Persons Authorized to Certify Disability, to add the term "DARS" to "DHHS" to update terminology.

DARS proposes to amend §109.515, Vouchers, by clarifying the payment guarantee of a voucher and the requirement of certification. Terminology is updated to replace the word "device" with the word "equipment."

DARS proposes to amend §109.517, Determination of Voucher Category Value and Eligibility Criteria for a Voucher, by updating terminology to replace the word "device" with the word "equipment" and by clarifying DARS DHHS as the DARS office responsible for implementing this section.

DARS proposes new §109.521, Determination of Approved Equipment or Services, establishing the requirements for approved equipment or services. This approach for determining approved equipment or services is new to STAP.

DARS proposes new §109.523, Reimbursement Amounts for Approved Equipment or Services, establishing the criteria for determining reimbursement amounts for approved equipment or services. Current practice allows the lesser of the voucher value, 125 percent of manufacturer's suggested retail price, or the STAP vendor's selling price. As state above, this method has led to inequitable pricing variations, which is confusing to STAP applicants and STAP vendors. Under new §109.523, proposed reimbursement amounts will be posted to the website for 45 days for comment prior to establishing the reimbursement amount. This proposed method of determining reimbursement amounts is new to STAP.

DARS proposes new §109.525, Vendor Eligibility Requirements, establishing the eligibility requirements for entities to serve as STAP vendors in the STAP program. This rule incorporates elements from existing DARS contracts standards. A new requirement for STAP is that vendors must exchange or receive reimbursement for at least one voucher every six months to maintain eligibility as a STAP vendor. If a vendor wants to be reinstated, a process is developed in which the STAP vendor can be reinstated the same day the request is made. STAP vendors who have lost eligibility may seek reinstatement as provided in §109.533.

DARS proposes new §109.527, Vendor Duties and Responsibilities, establishing the duties and responsibilities governing STAP vendors. The rule requires that STAP vendors be monitored on-site and that STAP vendors select appropriate equipment when working with or as certifiers. STAP vendors cannot charge a STAP voucher recipient an additional fee, cost, or penalty. Fees are typically charged when purchasing a wireless device. Carriers such as AT&T are not STAP vendors under this program, forcing STAP vendors to purchase equipment at cost and be reimbursed at cost. The amount reimbursed for these devices as established by §109.523 will address a fair profit to STAP vendors so that additional fees will not be necessary. Additionally, STAP vendors are required to provide all equipment or services authorized on the voucher. Section 109.527 is new to DARS and incorporates DARS contract standards, as well as PUC policy guidance.

DARS proposes new §109.529, Voucher Reimbursement, establishing the requirements for STAP vendor reimbursement under STAP. This is a new rule for DARS and incorporates elements that were used by PUC. New §109.529 prohibits partial exchanges and states that equipment must be exchanged as authorized on the voucher. The prohibition of partial exchange is new to STAP.

DARS proposes new §109.531, Suspending or Barring a Vendor, establishing the criteria for suspending or barring a STAP vendor from participating or receiving reimbursement under STAP and the criteria for reinstatement. This rule is new to DARS.

DARS proposes new §109.533, Reinstatement of STAP Vendors, establishing the process for reinstatement of STAP vendors who have been suspended or determined ineligible to participate in the program. Reinstatement requires a request made to DARS in writing and written documentation that all eligibility requirements have been met and that any violations or deficiencies have been remedied. This rule is new to DARS and to STAP.

FISCAL NOTE

Rebecca Trevino, DARS chief financial officer, has determined that for each year of the first five years that the amendments and new rules will be in effect, there are no foreseeable fiscal impli-

cations to either cost or revenues of state or local governments because of enforcing or administering the rules.

SMALL AND MICRO-BUSINESS ANALYSIS AND ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

Further, in accordance with Texas Government Code §2001.022, Ms. Trevino has determined that the proposal will have no effect on local economy; therefore, no local employment impact statement is required. Finally, Ms. Trevino has determined that the proposal will have no adverse economic effect on small businesses or micro-businesses. The proposed amendments and new rules do not impose any new or additional duties, requirements or costs that would impact the financial or business operations of the entities that are allowed to participate in this program as vendors.

PUBLIC BENEFIT

Ms. Trevino has determined that for each year of the first five years that the proposed amendments and new rules will be in effect, it is expected that the public will benefit by being assured that the necessary rules are in place to provide a clear and concise understanding of the STAP program as it applies to voucher recipients, STAP vendors, and the general public. Ms. Trevino has also determined that there is no probable economic cost to persons who are required to comply with the proposal.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

DARS has determined that these proposed amendments and new rules do 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, do not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposed rule amendments and new rules may be submitted within 30 days of publication of this proposal in the *Texas Register* to Texas Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Austin, Texas 78756 or electronically to DARSRules@dars.state.tx.us.

STATUTORY AUTHORITY

The amendments and new rules are proposed under the authority of Texas Utilities Code, Chapter 56, and in accordance with HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Texas Health and Human Services Commission with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

No other statute, article, or code is affected by this proposal.

§109.501. Purpose.

The purpose of this subchapter is to set out the administration and general procedures governing the Department of Assistive and Rehabilitative Services (DARS) Deaf and Hard of Hearing Services (DHHS) Specialized Telecommunications Assistance Program (STAP).

§109.503. Legal Authority.

The STAP [~~Specialized Telecommunications Assistance Program~~] is created under authority of the Utilities Code, Chapter 56, Subchapter E.

§109.505 Definitions.

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

(1) Application--The form DARS DHHS uses to gather and document information about a person to determine eligibility when applying for assistance under this program.

(2) Approved equipment or service--The equipment or service approved by DARS DHHS for reimbursement under this program.

(3) [~~(2)~~] Basic specialized telecommunications equipment--A basic device, or basic devices that work together as one device, determined by DARS DHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair his or her ability to access the telephone network.

(4) [~~(3)~~] Basic specialized telecommunications service--A service, or services that work together as one service, determined by DARS DHHS to be necessary to provide effective access to the telephone network for a person whose disabilities impair his or her ability to access the telephone network.

(5) DARS--The Department of Assistive and Rehabilitative Services.

(6) DHHS--The Office for Deaf and Hard of Hearing Services.

(7) Entity--Any individual owner, partner, company, or other business organization.

(8) [~~(4)~~] Financial assistance--A monetary value established by a voucher for [~~a~~] specialized equipment [~~device~~] or service; the value might not cover the full price of the equipment [~~device~~] or service.

(9) [~~(5)~~] Financial independence--A situation in which two or more otherwise eligible persons reside in the same household but are not dependent upon one another for financial support.

(10) [~~(6)~~] Functionally equivalent network access--Access to the telephone network that provides communication access for a person with a disability that is comparable to that of a person without a disability.

(11) [~~(7)~~] Legal guardian--A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(12) [~~(8)~~] Program--The Specialized Telecommunications Assistance Program (STAP).

(13) [~~(9)~~] PUC--The Public Utility Commission of Texas.

(14) Reimbursement amount--The amount, set by DARS DHHS, that DARS DHHS will reimburse to STAP vendors for an exchanged voucher.

(15) [~~(10)~~] Resident--A person who resides in Texas as evidenced by one of the following unexpired documents: Texas driver's

license, ID card issued by a governmental entity with address, utility bill with address, voter registration card, vehicle registration receipt, official letter from a residential facility signed by the director or supervisor, or other document approved by DARS DHHS.

(16) STAP--The Specialized Telecommunications Assistance Program.

(17) STAP contractor--The entity that DARS DHHS and/or PUC has contracted with to administer STAP vendor registration and voucher redemptions, including payments, on behalf of DARS DHHS.

(18) [~~(11)~~] STAP Vendor [~~vendor~~]--An entity that sells [~~or a person that can sell~~] basic specialized telecommunications equipment or services, as defined under this program, and is registered [~~as such~~] with the STAP contractor and approved by DARS DHHS [~~PUC~~]. Includes any individual owners, partners, companies, or other entities with an ownership interest in the STAP vendor.

(19) TUSF--The Texas Universal Service Fund.

(20) [~~(12)~~] Voucher--A financial assistance document issued by DARS DHHS to eligible applicants that is used to [~~exchanged for the~~] purchase [~~of~~] a specified type of basic specialized telecommunications equipment [~~device~~] or service from a STAP vendor [~~to facilitate functionally equivalent access to the telephone network~~].

(21) Voucher category--A specific class of equipment or services that provides the same or similar type of telephone network access.

(22) Voucher category value--For a specific voucher category, DARS DHHS will determine a reasonable price, which is the maximum reimbursement amount for any basic specialized telecommunications equipment or service within that voucher category.

§109.507. Determination of Basic Specialized Telecommunications Equipment or Service.

(a) In determining basic specialized telecommunications equipment or service available for voucher exchange, DARS DHHS applies the following criteria:

(1) The equipment or service must be for the purpose of accessing the telephone network.

(2) The primary function of the equipment or service must apply to telephone network access and not to daily living access, unless the equipment or service for daily living access enables a person to access the telephone network and is less expensive than equipment or service that functions primarily for telephone access, or unless there is no other equipment or service available that enables telephone access.

(3) A service must be less expensive than the basic specialized telecommunications equipment approved for a voucher under this program and must be able to meet the same need.

(b) DARS DHHS maintains a list of eligible equipment and services.

§109.509. Preliminary and Comprehensive Assessment.

(a) Preliminary assessment. To determine whether a person is eligible for a voucher, DARS DHHS conducts a preliminary assessment based on the certification section of the application. A person is eligible if DARS DHHS determines:

(1) that the person has a disability that impairs his or her ability to effectively access the telephone network;

(2) that the person can gain access to the telephone network by receiving equipment [~~a device~~] or a service authorized by a voucher; and

(3) that the person can gain access to the telephone network with equipment [~~a device~~] or a service authorized by the specific voucher applied.

(b) Comprehensive assessment. If additional information is needed to determine the appropriate basic voucher for an eligible person, DARS DHHS may conduct a comprehensive assessment of the person's disabilities, abilities, and needs. The comprehensive assessment is limited to information that is necessary to identify the basic needs that enable the person to access the telephone networks and may include an analysis of medical and/or other factors that bear on the person's impairment or impediments to accessing the telephone network.

(c) Existing information. DARS DHHS may use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information on the person, including information provided by the person, his or her family, the certifier, or any other source.

(d) Final determination. DARS DHHS determines eligibility for a voucher, and the determination is final.

§109.511. Voucher Recipient Eligibility.

(a) To be eligible for assistance from this program, a person must:

(1) be a resident of Texas;

(2) be a person with a disability that impairs his or her ability to effectively access the telephone network;

(3) be in a situation where no other person in the household with the same type of disability needing the same type of equipment has received a voucher for equipment unless persons in the household are financially independent of each other;

(4) not have received a voucher from DARS DHHS for any specialized telecommunications equipment or services before the fifth anniversary of the date the person exchanged the previously issued voucher under this program, unless before that anniversary, the person demonstrates that he or she has developed a need for a different type of specialized telecommunications equipment or service under this program because of a change in the person's disability status;

(5) be able to benefit from the specialized telecommunications equipment or service provided by the voucher in accessing the telephone network; and

(6) be certified as a person with a disability that impairs the person's ability to effectively access the telephone network, by a person authorized in this subchapter to issue such certifications.

(b) A voucher recipient who has not exchanged an issued voucher or has returned an issued voucher, in compliance with program rules, within the last five years, may be eligible for another voucher, as long as all other eligibility requirements are met.

(c) A voucher recipient who has returned the equipment or has stopped a service received through the exchange of a voucher, in compliance with program rules, may be eligible for another voucher if the equipment is returned or the service is stopped in compliance with §109.527 of this subchapter (relating to STAP Vendor Duties and Responsibilities).

§109.513. Persons Authorized to Certify Disability.

(a) An applicant must be certified as a person with a disability that impairs the person's ability to effectively access the telephone network. The following can serve as certifiers:

(1) licensed hearing aid specialists;

(2) licensed audiologists;

(3) licensed physicians;

(4) licensed advanced practice registered nurses;

(5) DARS rehabilitation counselors;

(6) state-certified teachers of persons who are deaf or hard of hearing;

(7) licensed speech pathologists;

(8) state-certified teachers of persons who are visually impaired;

(9) state-certified teachers of persons who are speech-impaired;

(10) state-certified special education teachers;

(11) STAP specialists as named in a DARS DHHS STAP Outreach and Training contract;

(12) licensed social workers; or

(13) DARS DHHS-approved specialists working in a disability-related field.

(b) By certifying an application, a certifier attests that he or she:

(1) is eligible to certify under the provisions of the program;

(2) has personally met with and assessed the applicant's disability to determine that he or she is eligible, in accordance with the program eligibility criteria;

(3) has reviewed the information on the application to ensure that the form is completed properly and that all requested information has been provided; and

(4) has determined that the applicant will be able to benefit from access to the telephone network system provided by the specialized telecommunications equipment or services requested on the application.

(c) An application must be properly certified before DARS DHHS can process and approve the application and issue the voucher.

(d) Certifiers who have violated or who are suspected of violating any DARS, PUC, or other rules, policies, or laws relating to this program may no longer be authorized to certify applications. Persons committing or suspected of committing such violations may be referred to the PUC, to the certifier's licensing agency, or to both, as appropriate.

§109.515. Vouchers.

(a) Eligible applicants are issued an individually numbered voucher with a specified dollar value to be used toward the purchase of the specialized telecommunications equipment or service that must be listed on the voucher.

(b) A voucher guarantees payment up to the amount specified on the voucher [~~in accordance with PUC rules, policies, or law~~] to a STAP vendor if all applicable rules, policies, procedures, and laws are satisfied [~~of new basic specialized telecommunications devices or of basic specialized telecommunications services~~].

(c) A voucher may [~~is not required to, and might~~] not[~~,~~] cover the full price of [~~an~~] applicable equipment [~~device~~] or service available under this program.

(d) An eligible applicant exchanging a voucher for the purchase of a specialized telecommunications equipment [~~device~~] or service is responsible for payment of the difference between the voucher's value and the price of the equipment [~~device~~] or service.

(e) A voucher is nontransferable and has no cash value.

(f) A voucher expires on the date stated on the voucher.

§109.517. Determination of Voucher Category Value and Eligibility Criteria for a Voucher.

(a) DARS DHHS determines the reasonable price for basic specialized telecommunications equipment [~~devices~~] or services for a voucher. The price becomes the voucher category value for a specific voucher.

(b) The voucher category value as determined by DARS DHHS might not cover the entire cost of the basic specialized telecommunications equipment or service.

(c) DARS DHHS reviews voucher category values at least annually. Existing Medicare and Medicaid schedules are considered in establishing voucher category values. Where Medicare and Medicaid schedules do not apply, voucher category value is determined by best value based on factors that include reasonable and customary industry standards for each specific equipment [~~device~~] or service.

(d) DARS DHHS reviews eligibility criteria for a voucher category at least biennially. DARS DHHS solicits comments from persons DARS DHHS considers knowledgeable in technology and in the telephone access needs of persons with disabilities. Comments obtained are considered in determining eligibility criteria for a voucher category.

(e) Proposed voucher category values and eligibility criteria for a voucher category are posted to the DARS DHHS STAP webpage for comments 45 calendar days before final determinations are made. Comments obtained from the advance posting are considered in determining voucher category values and eligibility criteria for a voucher category.

(f) DARS DHHS determines voucher category values and eligibility criteria for a voucher category, and the determination is final. Medicare and Medicaid rates may be considered in setting voucher category values, where applicable, but Medicaid or Medicare eligibility is not a determining factor for voucher eligibility criteria.

§109.521. Determination of Approved Equipment or Services.

(a) DARS DHHS determines approved makes and models of equipment and specific services for voucher exchange for reimbursement to STAP vendors.

(b) DARS DHHS reviews approved equipment and services at least annually. Approved equipment and services are determined by §109.507 of this subchapter (relating to Determination of Basic Specialized Telecommunications Equipment or Service).

(c) DARS DHHS determines approved makes and models of equipment and specific services, and the determination is final.

§109.523. Reimbursement Amounts for Approved Equipment or Services.

(a) DARS DHHS determines a reasonable reimbursement amount for approved makes and models of equipment and specific services to be paid to STAP vendors for exchanged vouchers.

(b) DARS DHHS reviews reimbursement amounts at least annually. Reimbursement amounts are determined by best value based on factors that include reasonable and customary industry standards for approved equipment and specific services.

(c) Proposed reimbursement amounts for approved equipment or services are posted to the DARS DHHS STAP web page for comments 45 calendar days before final determinations are made. Comments obtained from the advance posting are considered in determining reimbursement amounts for approved equipment and specific services.

(d) DARS DHHS determines reimbursement amounts for reimbursement to a STAP vendor, and the determination is final.

§109.525. STAP Vendor Eligibility Requirements.

(a) To be eligible to serve as a STAP vendor and receive reimbursements for STAP vouchers appropriately exchanged, an entity must meet the following eligibility requirements:

(1) complete a registration process.

(2) maintain current contact information to include current:

(A) owner(s), principal partner(s), officer(s), and/or company name(s);

(B) telephone number;

(C) email address;

(D) physical address;

(E) mailing address;

(F) current Federal Employer Identification Number (FEIN) or Texas Identification Number (TIN); and

(G) bank information for STAP vendor reimbursement payments by direct deposit.

(3) not be debarred, suspended, proposed for debarment, declared ineligible, or excluded from participation in STAP by DARS or any federal or State of Texas agency.

(4) not owe any delinquent debts or outstanding obligations to the Texas Universal Service Fund (TUSF) or State of Texas agency.

(b) In order to maintain eligibility, STAP vendors must comply with the following requirements:

(1) register annually;

(2) exchange or receive reimbursement for at least one STAP voucher every six months.

(c) STAP vendors that have lost STAP eligibility because of failure to exchange or receive reimbursement for a voucher during a six-month period may request reinstatement by DARS DHHS in accordance with §109.533 of this subchapter (relating to Reinstatement of STAP Vendors).

§109.527. STAP Vendor Duties and Responsibilities.

(a) STAP vendors must comply with all applicable rules, policies, procedures, and laws governing the program in order to remain eligible to participate in and receive reimbursement under the program.

(b) Any STAP vendor failing to comply with subsection (a) of this section may be denied reimbursement.

(c) STAP vendors must supply only new equipment that was purchased by the STAP vendor directly from a supplier.

(d) STAP vendors cannot receive STAP reimbursement for:

(1) used equipment;

(2) equipment paid for directly by a customer;

(3) vouchers on which they or one of their employees are also the named certifier without prior approval by DARS DHHS;

(4) vouchers that are not properly completed or redeemed in accordance with the voucher terms, conditions, and instructions; or

(5) returned equipment and requests to terminate services.

(e) STAP vendors must allow voucher recipients to return equipment or stop a service without penalty if the voucher recipient attempts to return the equipment or requests that the service be terminated within 30 calendar days of receipt of the equipment or service.

(1) STAP vendors that can show they have made reasonable but unsuccessful attempts to retrieve or accept the return of the equipment from the voucher recipient, are not bound by the 30-day requirement.

(2) STAP vendors must document their attempts to accept or retrieve equipment returned by the recipient.

(f) STAP vendors must provide a voucher recipient with a receipt if equipment is returned or service is terminated.

(g) STAP vendors must contact DARS DHHS in the event that equipment is returned or service is not used or is requested to be terminated by the STAP voucher recipient.

(h) STAP vendors must reimburse the TUSF within 30 calendar days of equipment being returned or service requested to be stopped, if equipment is returned or service is not used or is requested to be terminated by the STAP voucher recipient.

(i) STAP vendors must not submit a voucher for reimbursement before 10 calendar days from the date of the voucher exchange and before the equipment or services is delivered.

(j) STAP vendors must provide efficient delivery of equipment or access to services no later than 10 calendar days of the voucher exchange or communicate with the STAP voucher recipient when the equipment or service will be delivered.

(k) STAP vendors must provide STAP voucher recipients information on, instructions to, or demonstration of the use and setup of the equipment as appropriate to help recipients understand how to use and set up the equipment before completing the sale and submitting the voucher for reimbursement.

(l) STAP vendors must ensure that when they work with or act as STAP certifiers, appropriate equipment is selected for the STAP applicant.

(m) STAP vendors must not charge a STAP voucher recipient an additional fee, cost, or penalty, in addition to the STAP vendor price, except a reasonable shipping cost for mail orders, when a STAP voucher recipient purchases equipment or services with a STAP voucher.

(n) STAP vendors must notify DARS DHHS in writing at least 60 calendar days before the intended effective date of any change in legal entity status, such as ownership or control, name change, legal status with the Texas Secretary of State, Texas Comptroller of Public Accounts' Texas Identification Number, bank routing information, or any contact information.

(o) STAP vendors must retain records related to the program including purchase of the equipment or service exchanged and the distribution or delivery of equipment or service to the voucher recipient for a minimum of five years from the date of the voucher exchange.

(p) STAP vendors must allow DARS DHHS to conduct an audit, investigation, and/or program oversight of their business.

(1) During the five-year retention period, STAP vendors must authorize DARS DHHS, the State Auditor's Office, the PUC,

or their successor agencies to conduct an audit or investigation of the STAP vendor in connection with funds received for reimbursement of a STAP voucher. STAP vendors will provide any books, documents, papers, and records that are directly pertinent to the exchange of a STAP voucher for the purpose of conducting audits, examinations, or investigations or for making excerpts and transcriptions.

(2) STAP vendors must cooperate fully in an audit, examination, investigation, or funds validation or in the making of excerpts and transcriptions.

(3) STAP vendors must provide documentation from third parties reflecting equipment or services purchased and the purchase price and records showing sales to non-STAP consumers.

(4) STAP vendors must permit DARS DHHS on-site monitoring visits to review all financial or other records and management control systems relevant to the exchange of a STAP voucher.

(5) STAP vendors must remedy, within 30 calendar days, any weaknesses, deficiencies, or program noncompliance found as a result of a review, audit, or investigation as well as performance or fiscal exceptions found by DARS DHHS, the State Auditor's Office, or the PUC or their successor agencies or any of their duly authorized representatives.

(6) STAP vendors must refund disallowed costs or billed amounts or pay any other appropriate sanctions or penalties imposed by DARS DHHS to TUSF.

(q) STAP vendors must provide to the STAP voucher recipient all equipment or services as authorized on the voucher.

(r) STAP vendors must ensure individuals authorized to sign a STAP voucher receive a training provided by DARS DHHS before signing or exchanging a STAP voucher.

(s) STAP vendors must not stamp, label, or affix any company information on any STAP-related promotional materials or applications as a form of marketing.

(t) STAP vendors must exchange or receive reimbursement for at least one STAP voucher during the most recent six-month period. Failure to do so may result in automatic removal from the list of eligible STAP vendors.

§109.529. Voucher Reimbursement.

(a) Not later than the 45th calendar day after the date the STAP contractor receives the copy of the voucher that is to be sent to DARS DHHS, a STAP vendor must present the voucher for payment. The STAP contractor will pay the STAP vendor from the TUSF the lesser of the:

(1) DARS DHHS established reimbursement amount;

(2) STAP vendor's advertised purchase price for a voucher properly exchanged for specialized telecommunications equipment or a service for which a voucher recipient exchanges the voucher; or

(3) voucher value established by DARS DHHS for the voucher category of the equipment or service exchanged.

(b) A STAP vendor will receive not more than the STAP vendor's advertised price of the equipment or service if the recipient of a voucher exchanges the voucher for equipment or service that the STAP vendor sells for less than the DARS DHHS-established reimbursement amount.

(c) Vouchers will not be reimbursed for partial exchanges. All equipment must be exchanged as authorized on the voucher.

(d) STAP vendors will not be reimbursed for voucher exchanges that are made during any time the STAP vendor is noncompliant, suspended, ineligible, debarred, or inactive.

(e) STAP vendors seeking reimbursement for the sale of STAP equipment from an additional source (such as Medicare, Medicaid, or private insurance) in conjunction with a voucher exchange may not receive more than the total price of the equipment from all sources.

(f) A STAP vendor that exchanges a STAP voucher in person for the purchase of approved equipment or services in accordance with STAP requirements may request reimbursement from the STAP contractor. The STAP contractor will reimburse the STAP vendor from the TUSF for a voucher exchanged in accordance with STAP rules and policy when the STAP vendor provides the STAP contractor with the following documentation:

(1) the STAP vendor's copy of the voucher that states that Section 2 of the voucher must be completed and signed, in the space provided thereon, by an individual the STAP vendor authorizes to exchange and sign vouchers. By signing the voucher, the STAP vendor certifies that the equipment or service has been delivered to the voucher recipient and that the equipment was new when delivered and was not used, re-conditioned, or obsolete. The completed and signed voucher must be sent to DARS.

(2) a receipt that contains a description of the equipment or service exchanged for the STAP voucher and the total price charged to the voucher recipient, including the amount to be reimbursed by DARS for the equipment or service exchanged.

(g) A STAP vendor that exchanges a STAP voucher by mail for the purchase of approved equipment or services in accordance with STAP requirements may request reimbursement from the STAP contractor. The STAP contractor will reimburse a voucher (exchanged in accordance with STAP rules and policy) upon receipt from the STAP vendor of:

(1) proof of delivery of the equipment or service to the voucher recipient; and

(2) a receipt that contains a description of the equipment or service exchanged by mail for the STAP voucher and the total price charged to the voucher recipient, including the amount to be reimbursed by the STAP contractor from the TUSF for the equipment or service exchanged.

(h) STAP vendors must submit voucher reimbursement requests along with supporting documentation to the contractor within 120 calendar days of the date of the voucher exchange or on the proof of delivery.

(i) Vouchers or supporting documentation submitted after 120 calendar days from the date of the voucher exchange will not be reimbursed.

(j) Vouchers submitted that do not have supporting documentation, as required by this chapter, and/or are not submitted within 120 calendar days from the date of the voucher exchange will not be reimbursed.

(k) DARS DHHS may investigate whether the presentation of a voucher for payment represents a valid transaction for equipment or service under the program.

(l) If there is a dispute regarding the amount or propriety of the payment or whether the equipment or service is appropriate or adequate to meet the needs of the voucher recipient, DARS DHHS and/or the STAP contractor may:

(1) delay or deny payment of a voucher to a STAP vendor until the dispute is resolved;

(2) provide payment of a voucher, conditional upon the return of the payment if the equipment is returned to the STAP vendor or if the service is not used by the voucher recipient; or

(3) provide an alternative dispute resolution process for resolving a dispute regarding a subject described by paragraphs (1) or (2) of this subsection.

(m) Reimbursements may also be subject to other such limitations or conditions as determined by DARS DHHS to be just and reasonable, including investigation of whether the presentation of a STAP voucher represents a valid transaction for equipment or services under STAP.

(n) If a dispute arises as to whether the submitted documentation is sufficient to create a presumption of a valid STAP sales transaction, DARS DHHS will make the final determination on the sufficiency of the documentation.

§109.531. Suspension or Loss of STAP Vendor Eligibility.

(a) A STAP vendor may be suspended from or lose eligibility to participate in the program for any of the following causes:

(1) failure to comply with the requirements of the program;

(2) seeking or receiving reimbursement for equipment or services that are not new or were not provided;

(3) seeking or receiving reimbursement for equipment or services on a voucher that is not a valid STAP voucher;

(4) violating or suspicion of violating any DARS DHHS or other applicable rules, policies, or laws relating to this program;

(5) failure to repay the TUSF for equipment or services the STAP vendor received reimbursement for but for which the STAP vendor did not provide the equipment or service, or for which the STAP vendor was not otherwise entitled to reimbursement; or

(6) being debarred or suspended from doing business with, or receiving payments from, the federal or State of Texas government.

(b) DARS DHHS will notify a STAP vendor in writing if DARS DHHS determines that the STAP vendor or service provider is suspended from the program or is ineligible to participate in the program.

§109.533. Reinstatement of STAP Vendors.

(a) A STAP vendor that has been suspended from or determined to be ineligible to participate as a STAP vendor in the program may request reinstatement into the program by:

(1) submitting a written request to DARS DHHS for reinstatement; and

(2) submitting written documentation showing that:

(A) all program eligibility requirements have been satisfied; and

(B) any violations or deficiencies that resulted in the suspension or ineligibility determination have been remedied.

(b) DARS decision on a reinstatement request is final.

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 November 10, 2014.

TRD-201405349
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: December 21, 2014
For further information, please call: (512) 424-4050

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.21

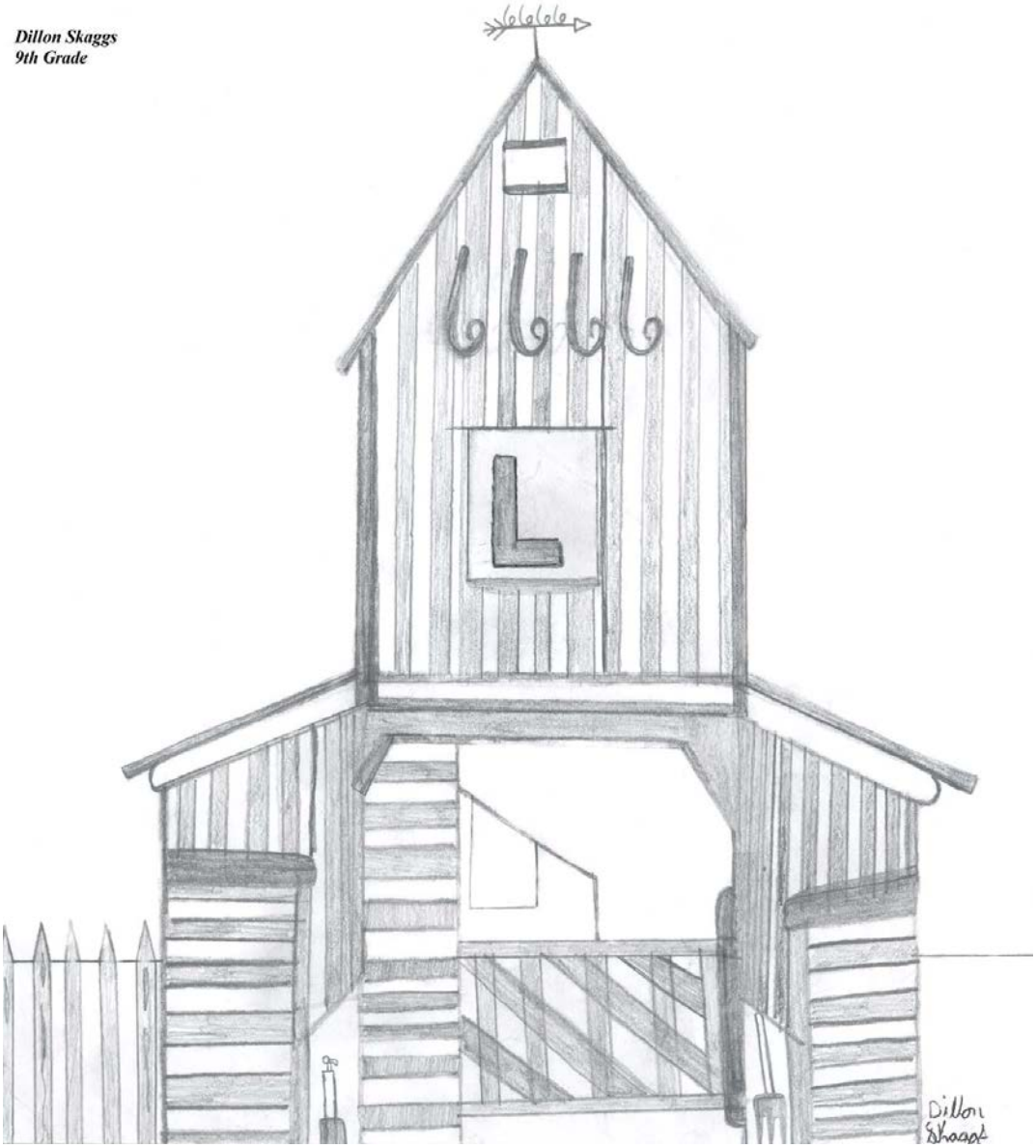
Proposed amended §145.21, published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3575), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on November 7, 2014.

TRD-201405325

♦ ♦ ♦

Dillon Skaggs
9th Grade



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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.102, concerning General Principles of Allowable and Unallowable Costs; §355.103, concerning Specifications for Allowable and Unallowable Costs; §355.104, concerning Revenues; §355.111, concerning Administrative Contract Violations; §355.308, concerning Direct Care Staff Rate Component; §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; and §355.6907, concerning Reimbursement Methodology for Day Activity and Health Services. The amendments to §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures, are adopted with changes to correct a punctuation issue to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6308). The text of the rule will be republished. The amendments to §§355.102, 355.103, 355.104, 355.111, 355.308, 355.503, 355.505, 355.513, and 355.6907 are adopted without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6308) and will not be republished.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is adopting amendments to these rules to 1) change the capitalization threshold for assets from $2,500 to $5,000 and adjust the useful life for wheelchair lifts from four years to five years; 2) correct numbering to provide greater clarity; 3) modify cost report training requirements; 4) require providers to use the most current version of the document that defines estimated useful lives of assets; 5) update dates in examples to the current period; 6) delete obsolete language; 7) change the required release date for material pertinent to proposed reimbursements from ten working days before the public hearing to ten calendar days before the public hearing; 8) delete language detailing the contents of material pertinent to proposed reimbursements; and 9) change the compliance period for correcting an administrative contract violation.

Comments

The 30-day public comment period ended September 22, 2014. During this period, HHSC did not receive any public comments regarding the proposed amendments to these rules.

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §§355.102 - 355.105, 355.111

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.

(a) General reporting. Except where otherwise specified under this title, the Texas Health and Human Services Commission (HHSC) follows the requirements, methods, and procedures set forth in this section to determine costs appropriate for use in the reimbursement determination process.

(b) Cost report requirements. Unless specifically stated in program rules or excused as described in paragraph (4)(D) of this subsection, each provider must submit financial and statistical information on cost report forms provided by HHSC, or on facsimiles that are formatted according to HHSC specifications and are pre-approved by HHSC staff, or electronically in HHSC-prescribed format in programs where these systems are operational. The cost reports must be submitted to HHSC in a manner prescribed by HHSC. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of HHSC. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to HHSC.

(1) Accounting methods. All financial and statistical information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) and in the case of governmental entities operating on a cash or modified accrual basis. For cost-reporting purposes, accrued expenses must be incurred during the cost reporting period and must be paid within 180 days after the end of that cost reporting period. In situations where a contracted provider, any of its controlling entities, its parent company/sole member, or its related-party management com-

pany has filed for bankruptcy protection, the contracted provider may request an exception to the 180-day requirement for payment of accrued allowable expenses by submitting a written request to the HHSC Rate Analysis Department. The written request must be submitted within 60 days of the date of the bankruptcy filing or at least 60 days prior to the due date of the cost report for which the exception is being requested, whichever is later. The contracted provider will then be requested by the HHSC Rate Analysis Department to provide certain documentation, which must be provided by the specified due date. Such exceptions due to bankruptcy may be granted for reasonable, necessary and documented accrued allowable expenses that were not paid within the 180-day requirement. Accrued revenues must be for services performed during the cost reporting period and do not have to be received within 180 days after the end of that cost reporting period in order to be reported as revenues for cost-reporting purposes. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply in the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(2) Recordkeeping and adequate documentation. There is a distinction between noncompliance in recordkeeping, which equates with unauditability of a cost report and constitutes an administrative contract violation or, for the Nursing Facility program, may result in vendor hold, and a provider's inability to provide adequate documentation, which results in disallowance of relevant costs. Each is discussed in the following paragraphs.

(A) Recordkeeping. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Providers must maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules. HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(i) For Texas Department of Aging and Disability Services (DADS)-contracted providers, each provider must maintain records according to the requirements stated in 40 TAC §69.158 (relating to How long must contractors, subrecipients, and subcontractors keep contract-related records?) and according to the HHSC's prescribed chart of accounts, when available.

(ii) If a contractor is terminating business operations, the contractor must ensure that:

(I) records are stored and accessible; and

(II) someone is responsible for adequately maintaining the records.

(iii) For nursing facilities, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(iv) For all other programs, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(B) Adequate documentation. To be allowable, the relationship between reported costs and contracted services must be clearly and adequately documented. Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of contracted client care or the relationship of the central office to the individual service delivery entity level. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by HHSC auditors to perform required tests of reasonableness, necessity, and allowability.

(i) The minimum allowable statistical duration for a time study upon which to base salary allocations is four weeks per year, with one week being randomly selected from each quarter so as to assure that the time study is representative of the various cycles of business operations. One week is defined as only those days the contracted provider is in operation during seven continuous days. The time study can be performed for one continuous week during a quarter, or it can be performed over five or seven individual days, whichever is applicable, throughout a quarter. The time study must be a 100% time study, accounting for 100% of the time paid the employee, including vacation and sick leave.

(ii) To support the existence of a loan, the provider must have available a signed copy of the loan contract which contains the pertinent terms of the loan, such as amount, rate of interest, method of payment, due date, and collateral. The documentation must include an explanation for the purpose of the loan and an audit trail must be provided showing the use of the loan proceeds. Evidence of systematic interest and principal payments must be available and supported by the payback schedule in the note or amortization schedule supporting the note. Documentation must also include substantiation of any costs associated with the securing of the loan, such as broker's fees, due diligence fees, lender's fees, attorney's fees, etc. To document allowable interest costs associated with related party loans, the provider is required to maintain documentation verifying the prime interest rate in accordance with §355.103(b)(11)(C) of this title for a similar type of loan as of the effective date of the related party loan.

(iii) For ground transportation equipment, a mileage log is not required if the equipment is used solely (100%) for provision of contracted client services in accordance with program requirements in delivering one type of contracted care. However, the contracted provider must have a written policy that states that the ground transportation equipment is restricted to that use and that policy must be followed. For ground transportation equipment that is used for several purposes (including for personal use) or multiple programs or across various business components, mileage logs must be maintained. Personal use includes, among other things, driving to and from a personal residence. At a minimum, mileage logs must include for each individual trip the date, the time of day (beginning and ending), driver, persons in the vehicle, trip mileage (beginning, ending, and total), purpose of the trip, and the allocation centers (the departments, programs, and/or business entities to which the trip costs should be allocated). Flight logs must include dates, mileage, passenger lists, and destinations, along with any other information demonstrating the purpose of the trips so that a relationship to contracted client care in Texas can be determined. For the purpose of comparison to the cost of commercial alternatives, documentation of the cost of operating and maintaining a private aircraft includes allowable expenses relating to the lease or depreciation of the aircraft; aircraft fuel and maintenance expenses;

aircraft insurance, taxes, and interest; pilot expenses; hangar and other related expenses; mileage, vehicle rental or other ground transportation expense; and airport parking fees. Documentation demonstrating the allowable cost of commercial alternatives includes commercial airfare ticket costs at lowest fare offered (including all discounts) and associated expenses including mileage, vehicle rental or other ground transportation expense; airport parking fees; and any hotel or per diem due to necessary layovers (no scheduled flights at time of return trip).

(iv) To substantiate the allowable cost of leasing a luxury vehicle as defined in §355.103(b)(10)(C)(i) of this title, the provider must obtain at the time of the lease a separate quotation establishing the monthly lease costs for the base amount allowable for cost-reporting purposes as specified in §355.103(b)(10)(C)(i) of this title. Without adequate documentation to verify the allowable lease costs of the luxury vehicle, the reported costs shall be disallowed.

(v) For adequate documentation purposes, a written description of each cost allocation method must be maintained that includes, at a minimum, a clear and understandable explanation of the numerator and denominator of the allocation ratio described in words and in numbers, as well as a written explanation of how and to which specific business components the remaining percentage of costs were allocated.

(vi) To substantiate the allowable cost for staff training as defined in §355.103(b)(15)(A) of this title, the provider must maintain a description of the training verifying that the training pertained to contracted client care-related services or quality assurance. At a minimum, a program brochure describing the seminar or a conference program with description of the workshop must be maintained. The documentation must provide a description clearly demonstrating that the seminar or workshop provided training pertaining to contracted client care-related services or quality assurance.

(vii) Documentation regarding the allocation of costs related to noncontracted services, as specified in §355.102(j)(2) of this title, must be maintained by the provider. At a minimum, the provider must maintain written records verifying the number of units of noncontracted services provided during the provider's fiscal year, along with adequate documentation supporting the direct and allocated costs associated with those noncontracted services.

(viii) Adequate documentation to substantiate legal, accounting, and auditing fees must include, at a minimum, the amount of time spent on the activity, a written description of the activity performed which clearly explains to which business component the cost should be allocated, the person performing the activity, and the hourly billing amount of the person performing the activity. Other legal, accounting, and auditing costs, such as photocopy costs, telephone costs, court costs, mailing costs, expert witness costs, travel costs, and court reporter costs, must be itemized and clearly denote to which business component the cost should be allocated.

(ix) Providers who self insure for all or part of their employee-related insurance costs, such as health insurance and workers' compensation costs, must use one of the two following methods for determining and documenting the provider's allowable costs under the cost ceilings and any carry forward as described in §355.103(b)(13)(E) of this title.

(I) Providers may obtain and maintain each fiscal year's documentation to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years.

(II) If providers choose not to obtain and maintain commercial bids as described in subclause (I) of this clause, providers may claim as an allowable cost the health insurance actual paid claims incurred on behalf of the employees that does not exceed 10% of the payroll for employees eligible for receipt of this benefit. In addition, providers may claim as an allowable cost the workers' compensation actual paid claims incurred on behalf of the employees, an amount each cost report period not to exceed 10% of the payroll for employees eligible for receipt of this benefit.

(III) Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods.

(x) Providers who self insure for all or part of their coverage for nonemployee-related insurance, such as malpractice insurance, comprehensive general liability, and property insurance, must maintain documentation for each cost-reporting period to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years. Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods. Governmental providers must document the existence of their claims management and risk management programs.

(xi) Regarding compensation of owners and related parties, providers must maintain the following documentation, at a minimum, for each owner or related party: a detailed written description of actual duties, functions, and responsibilities; documentation substantiating that the services performed are not duplicative of services performed by other employees; time sheets or other documentation verifying the hours and days worked; the amount of total compensation paid for these duties, with a breakdown detailing regular salary, overtime, bonuses, benefits, and other payments; documentation of regular, periodic payments and/or accruals of the compensation, documentation that the compensation is subject to payroll or self-employment taxes; and a detailed allocation worksheet indicating how the total compensation was allocated across business components receiving the benefit of these duties.

(I) Regarding bonuses paid to owners and related parties, the provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy. At a minimum, the bonus policy must include the basis for distributing the bonuses including qualifications for receiving the bonus, and how the amount of each bonus is calculated. Other documentation must specify who received bonuses, whether the persons receiving bonuses are owners, related parties, or arm's-length employees, and the bonus amount received by each individual.

(II) Regarding benefits provided to owners and related parties, the provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy. At a minimum, the documentation must include the basis for eligibility for each type of benefit available, who is eligible to receive each type of benefit, who actually receives each type of benefit, whether the persons receiving each type of benefit are owners, related parties, or arm's-length employees, and the amount of each benefit received by each individual.

(xii) Regarding all forms of compensation, providers must maintain documentation for each employee which clearly identifies each compensation component, including regular

pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form of compensation. Types of documentation would include insurance policies; provider benefit policies; records showing paid leave accrued and taken; documentation to support hours (regular and overtime) worked and wages paid; and mileage logs or other documentation to support mileage reimbursements and travel allowances. For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20x1 and receives the corresponding vacation pay during 20x3, that employee's compensation documentation for 20x3 should clearly indicate that the vacation pay received had been accrued during 20x1.

(I) For staff required to maintain continuous daily time sheets as per §355.102(j) of this title and subclause (II) of this clause, the daily timesheet must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee must sign each timesheet. The employee's supervisor must sign the timesheets each payroll period or at least monthly. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first level supervision of direct care workers.

(II) For the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID), Home and Community-based Services (HCS) and Texas Home Living (TxHmL) programs, staff required to maintain continuous daily timesheets include staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first-level supervision of direct care workers.

(xiii) Management fees paid to related parties must be documented as to the actual costs of the related party for materials, supplies, and services provided to the individual provider, and upon which the management fees were based. If the cost to the related party includes owner compensation or compensation to related parties, documentation guidelines for those costs are specified in clause (xi) of this subparagraph. Documentation must be maintained that indicates stated objectives, periodic assessment of those objectives, and evaluation of the progress toward those objectives.

(xiv) For central office and/or home office costs, documentation must be maintained that indicates the organization of the business entity, including position, titles, functions, and compensation. For multi-state organizations, documentation must be maintained that clearly defines the relationship of costs associated with any level of management above the individual Texas contracted entity which are allocated to the individual Texas contracted entity.

(xv) Documentation regarding depreciable assets includes, at a minimum, historical cost, date of purchase, depreciable basis, estimated useful life, accumulated depreciation, and the calculation of gains and losses upon disposal.

(xvi) Providers must maintain documentation clearly itemizing their employee relations expenditures. For employee entertainment expenses, documentation must show the names of all persons participating, along with classification of the person attending, such as employee, nonemployee, owner, family of employee, client, or vendor.

(xvii) Adequate documentation substantiating the offsetting of grants and contracts from federal, state, or local governments prior to reporting either the net expenses or net revenue must be maintained by the provider. As specified in §355.103(b)(18) of this title, such offsetting is required prior to reporting on the cost report. The provider must maintain written documentation as to the purpose for which the restricted revenue was received and the offsetting of the restricted revenue against the allowable and unallowable costs for which the restricted revenue was used.

(xviii) During the course of an audit or an audit desk review, the provider must furnish any reasonable documentation requested by HHSC auditors within ten working days of the request or a later date as specified by the auditors. If the provider does not present the requested material within the specified time, the audit or audit desk review is closed, and HHSC automatically disallows the costs in question.

(xix) Any expense that cannot be adequately documented or substantiated is disallowed. HHSC is not responsible for the contracted provider's failure to adequately document and substantiate reported costs.

(xx) Any cost report that is determined unauditable through a field audit or that cannot have its costs verified through a desk review will not be used in the reimbursement determination process.

(3) Cost report and methodology certification. Providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements or is determined to contain misrepresented or falsified information. Cost report preparers must certify that they read the cost determination process rules, the reimbursement methodology rules, the cost report cover letter and cost report instructions, and that they understand that the cost report must be prepared in accordance with the cost determination process rules, the reimbursement methodology rules and cost report instructions. Not all persons who contributed to the completion of the cost report must sign the certification page. However, the certification page must be signed by a responsible party with direct knowledge of the preparation of the cost report. A person with supervisory authority over the preparation of the cost report who reviewed the completed cost report may sign a certification page in addition to the actual preparer.

(4) Requirements for cost report completion.

(A) A completed cost report must:

(i) be completed according to the cost determination rules of this chapter, program-specific allowable and unallowable rules, cost report instructions, and policy clarifications;

(ii) contain a signed, notarized, original certification page or an electronic equivalent where such equivalents are specifically allowed under HHSC policies and procedures;

(iii) be legible with entries in sufficiently dark print to be photocopied;

(iv) contain all pages and schedules;

(v) be submitted on the proper cost report form;

(vi) be completed using the correct cost reporting period; and

(vii) contain a copy of the state-issued cost report training certificate except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS).

(B) Providers are required to report amounts on the appropriate line items of the cost report pursuant to guidelines established

in the methodology rules, cost report instructions, or policy clarifications. Refer to program-specific reimbursement methodology rules, cost report instructions, or policy clarifications for guidelines used to determine placement of amounts on cost report line items.

(i) For nursing facilities, placement on the cost report of an amount, which was determined to be inaccurately placed, may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(ii) For School Health and Related Services (SHARS), placement on the cost report of an amount, which was determined to be inaccurately placed, may result in an administrative contract violation as specified in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

(iii) For all other programs, placement on the cost report of an amount, which was determined to be inaccurately placed, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(C) A completed cost report must be filed by the cost report due date.

(i) For nursing facilities, failure to file a completed cost report by the cost report due date may result in vendor hold as specified in §355.403 of this title.

(ii) For SHARS, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(iii) For all other programs, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(D) HHSC may excuse providers from the requirement to submit a cost report. A provider that is not enrolled in Attendant Compensation Rate Enhancement as described in §355.112 of this title (relating to Attendant Compensation Rate Enhancement) for a specific program or the Nursing Facility Direct Care Staff Rate enhancement as described in §355.308 of this title (relating to Direct Care Staff Rate Component) during the reporting period for the cost report in question, is excused from the requirement to submit a cost report for such program if the provider meets one or more of the following conditions:

(i) For all programs, if the provider performed no billable services during the provider's cost-reporting period.

(ii) For all programs, if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(iii) For all programs, if circumstances beyond the provider's control, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency, make cost-report completion impossible.

(iv) For all programs, if all of the contracts that the provider is required to include in the cost report have been terminated before the cost-report due date.

(v) For the Nursing Facility, ICF/IID, Assisted Living/Residential Care (AL/RC), and Residential Care (RC) programs, if the total number of days that the provider performed service for HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period.

(vi) For the Day Activity and Health Services (DAHS) program, if the provider's total units of service provided to HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period times 1.5.

(vii) For the Home-Delivered Meals program, if a provider agency served an average of fewer than 500 meals a month for the designated cost report period.

(viii) For the Department of Family and Protective Services (DFPS) 24-Hour Residential Child-Care program, if:

(I) the contract was not renewed;

(II) only Basic Level services were provided;

(III) the total number of state-placed days (DFPS days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;

(IV) the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;

(V) for facilities that provide Emergency Care Services only, the occupancy rate was less than 30 percent during the cost-reporting period; or

(VI) for all other facility types except child-placing agencies and those providing Emergency Care Services, the occupancy rate was less than 50 percent during the cost-reporting period.

(5) Cost report year. A provider's cost report year must coincide with the provider's fiscal year as used by the provider for reports to the Internal Revenue Service (IRS) or with the state of Texas' fiscal year, which begins September 1 and ends August 31.

(A) Providers whose cost report year coincides with their IRS fiscal year are responsible for reporting to HHSC Rate Analysis any change in their IRS fiscal year and subsequent cost report year by submitting written notification of the change to HHSC Rate Analysis along with supportive IRS documentation. HHSC Rate Analysis must be notified of the provider's change in IRS fiscal year no later than 30 days following the provider's receipt of approval of the change from the IRS.

(B) Providers who chose to change their cost report year from their IRS fiscal year to the state fiscal year or from the state fiscal year to their IRS fiscal year must submit a written request to HHSC Rate Analysis by August 1 of state fiscal year in question.

(6) Failure to report allowable costs. HHSC is not responsible for the contracted provider's failure to report allowable costs, however any omitted costs which are identified during the desk review or audit process will be included in the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(c) Cost report due date.

(1) Providers must submit cost reports to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the cost report forms, whichever due date is later.

(2) For SHARS, providers must submit cost reports to HHSC Rate Analysis as specified in §355.8443 of this title.

(3) HHSC may grant extensions of due dates for good cause. A good cause is defined as a circumstance which the provider could not reasonably be expected to control and for which adequate advance planning and organization would not have been of any assistance. Providers must submit requests for extensions in writing to HHSC Rate Analysis. Requests for extensions must be received by HHSC Rate Analysis prior to the cost report due date. HHSC staff will respond in writing to requests within 15 days of receipt.

(4) HHSC may require additional financial and other statistical information, in the form of special surveys or reports, to ensure the fiscal integrity of the program. Providers must submit such additional information and/or special surveys or reports to HHSC Rate Analysis upon request by the date specified by HHSC Rate Analysis in its transmittal or cover letter to the special survey, report, or request for additional information.

(d) Amended cost report due dates. HHSC accepts submittal of provider-initiated or HHSC-requested amended cost reports as follows.

(1) Provider-initiated amended cost reports must be received no later than the date in subparagraph (A) or (B) of this paragraph, whichever occurs first. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be used in reimbursement determinations. Provider-initiated amended cost reports must be received no later than the earlier of:

(A) 60 days after the original due date of the cost report; or

(B) 30 days prior to the public hearing on proposed reimbursement or reimbursement parameter amounts.

(2) HHSC-required amendments to the cost reports must be received on or before the date specified by HHSC in its request for the amended cost report. Failure to submit the requested amendment to the cost report by the due date is considered a failure to complete a cost report as specified in subsection (b)(4)(C) of this section.

(e) Field audit standards. HHSC performs cost report field audits in a manner consistent with Government Auditing Standards issued by the Comptroller General of the United States.

(f) Cost of out-of-state audits. As specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), HHSC conducts desk reviews of all cost reports not selected for field audit. HHSC also conducts field audits of provider records and cost reports. Although the number of field audits performed each year may vary, HHSC seeks to maximize the number of field audited cost reports available for use in its cost projections. Whenever possible, all the records necessary to verify information submitted to HHSC on cost reports, including related party transactions and other business activities engaged in by the provider, must be accessible to HHSC audit staff within the state of Texas within fifteen working days of field audit or desk review notification. When records are not available to HHSC audit staff within the state of Texas, the provider must pay the actual costs for HHSC staff to travel and review the records out-of-state. HHSC must be reimbursed for these costs within 60 days of the request for payment.

(1) For nursing facilities, failure to reimburse HHSC for these costs within 60 days of the request for payment may result in vendor hold as specified in §355.403 of this title.

(2) For SHARS, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(3) For all other programs, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(g) Public hearings.

(1) Uniform reimbursements. For programs where reimbursements are uniform by class of service and/or provider type, HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten calendar days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will include the proposed reimbursements, the inflation adjustments used to determine them, and the impact on reimbursements of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(2) Contractor-specific reimbursements. For programs in which reimbursements are contractor-specific, HHSC will hold a public hearing on the reimbursement determination parameter dollar amounts (e.g., ceilings, floors, or program reimbursement formula limits) before HHSC approves parameter dollar amounts. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursement parameter dollar amounts. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursement parameter dollar amounts. At least ten calendar days before the public hearing takes place, material pertinent to the proposed reimbursement parameter dollar amounts will be made available to the public. This material will include the proposed reimbursement parameter dollar amounts, the inflation adjustments used to determine them, and the impact on the reimbursement parameter dollar amounts of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(h) Insufficient cost data. If an insufficient number of accurate, full-year cost reports is submitted, as would occur with a new program, or if there are insufficient available data, as would occur in changes in program design, changes in the definition of units of service or changes in regulations or program requirements, reimbursements may be based on a pro-forma analysis by HHSC staff. A pro-forma analysis is defined as an item-by-item, or classes-of-items, calculation of the reasonable and necessary expenses for a provider to operate. The analysis may involve assumptions about the salary of an administrator or program director, staff salaries, employee benefits and payroll taxes, building depreciation, mortgage interest, contracted client care expenses, and other building or administration expenses. To determine the cost per unit of service, HHSC adds all the pro-forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. The pro-forma analysis is based on available information that is determined to be sufficient, accurate, and reliable by HHSC, including valid cost report data and survey data. The pro-forma analysis is conducted in a way that ensures that the resul-

tant reimbursements are sufficient to support the requirements of the contracted program. When HHSC staff determine that sufficient and reliable cost report data have become available, the pro-forma reimbursement determination may be replaced with a process based on cost reports.

(i) Limits on related-party compensation. HHSC may place upper limits or caps on related-party compensation as follows:

(1) For related-party administrators and directors, the upper limit for compensation is equal to the 90th percentile in the array of all non-related-party annualized compensation as reported by all contracted providers within a program. In addition, the hourly compensation for related-party administrators and directors is limited to the annualized upper limit for related-party administrators and directors divided by 2,080.

(2) For related-party assistant administrators and assistant directors, the upper limit for compensation is equal to the 90th percentile in the array of all non-related party annualized compensation as reported by all contracted providers within a program. In addition, the hourly compensation for related-party assistant administrators and assistant directors is limited to the annualized upper limit for related-party assistant administrators and assistant directors divided by 2,080.

(3) For owners, partners, and stockholders (when the owner, partner, or stockholder is performing contract level administrative functions but is not the administrator, director, assistant administrator or assistant director), the upper limits for compensation are equal to the upper limits for related-party administrators and directors.

(4) For all other staff types:

(A) For the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, Home and Community-based Services and Texas Home Living programs, related-party limitations are specified in §355.457 of this title (relating to Cost Finding Methodology), and §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) For all other programs, related-party compensation is limited to reasonable and necessary costs as described in §355.102 of this title.

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

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.308

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §§355.503, 355.505, 355.513

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.6907

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT
SUBCHAPTER C. MINIMUM STANDARDS FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §§1.71, 1.72, 1.77, 1.83

The Texas State Library and Archives Commission adopts amendments to 13 TAC §§1.71, 1.72, 1.77, and 1.83, regarding standards for accreditation of libraries, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6351). The amendments clarify the definition relating to county funds in "Population Served," clarify terms and the wording structure, and adopt new and updated rules of the standards for "Library Service, Local Government Support, and Other Requirements."

One comment was received; it supported the proposed changes to the rules.

The amended sections are adopted under the authority of Government Code §441.127 that provides the Commission authority to establish accreditation standards for system membership.

The amended sections affect the Government Code §441.127.

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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Edward Seidenberg
Deputy Director
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13 TAC §1.74, §1.81

The Texas State Library and Archives Commission adopts the repeal of 13 TAC §1.74 and §1.81, regarding standards for accreditation of libraries, without changes as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6353). The repealed rules are being replaced by new rules with updated criteria regarding the standards for "Local Operating Expenditures and Quantitative Standards."

No comments were received on the proposal.

The repeal is under the authority of Government Code §441.127 that provides the Commission authority to establish accreditation standards for system membership.

The repealed sections affect the Government Code §441.127.

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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Edward Seidenberg
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13 TAC §1.74, §1.81

The Texas State Library and Archives Commission adopts new 13 TAC §1.74 and §1.81, regarding standards for accreditation of libraries, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6353). The new rules establish new and changed criteria, especially raising the minimum local expenditures, for the standards regarding "Local Operating Expenditures and Quantitative Standards."

Four comments were received. The first comment supported the changes to the accreditation standards as proposed. The second comment stated that the requirement in §1.81 to have at least 1% of total items in collection published in the last five years seemed low. The agency responds that the taskforce did consider this item carefully and recommended 1% based on concerns about the impact of this requirement from large libraries. The third comment stated that the library director should be required to have an MLS degree. The agency responds that there

is a requirement for libraries serving over 25,000 population to have a person with an MLS degree on staff and that this requirement would have a very serious impact on the approximately 400 libraries serving under 25,000 population which would not have the capacity to comply. The fourth comment stated that the proposed increases in government support in §1.81 will cause a significant increase in the financial burden on the budgets of Texas counties, particularly in small counties where resources are already scarce and the proposed changes will present a challenge to those counties to attain or retain accreditation; this comment gave the example that for counties serving under 5,000 the proposed rule would increase the annual government support 97% over the next 8 years. The agency responds that the increases in minimum local expenditures per capita in §1.81 are approximately 1% to 2.2% every three years (depending on population category). This small increase assists libraries in maintaining minimum expenditures relative to inflation. The percent increase from 2015 - 2022 in total minimum local expenditures for libraries serving under 5,000 (for those libraries for which the total amount is larger than the per capita amount) is larger to continue to establish a reasonable minimum total local expenditures considering only half of the minimum local expenditures in §1.81 must come from local government sources.

The new sections are adopted under the authority of Government Code §441.127 that provides the Commission authority to establish accreditation standards for system membership.

The new sections affect the Government Code §441.127.

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

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CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 1. GENERAL GRANT GUIDELINES

13 TAC §2.118

The Texas State Library and Archives Commission adopts amendments to 13 TAC §2.118, regarding the decision making process for competitive grants, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6355). The amendments establish a higher minimum standard for grant funding, and therefore public funds will be better spent.

No comments were received on the proposal.

The amended rule is adopted under the authority of Government Code §441.123 that directs the commission to establish and develop a state library system and §441.136 that authorizes the director and librarian to propose rules necessary for the administration of the program.

The adopted amended rule affects Government Code §441.135 and §441.1381.

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

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CHAPTER 8. TEXSHARE LIBRARY CONSORTIUM

13 TAC §8.1

The Texas State Library and Archives Commission adopts amendments to 13 TAC §8.1, regarding the definition for libraries of clinical medicine in the TexShare Consortium, with changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6355). The amendments update paragraph (7)(A) and (B), the definitions of "Extensive library services" and "Extensive collections in the fields of clinical medicine and the history of medicine."

One comment was received. It recommended the deletion of the second use of the word "unique" in paragraph (7)(B)(ii)(II). The agency concurs.

The amended rule is adopted under the authority of Government Code §441.225(b) that authorizes the commission to adopt rules to govern the operation of the TexShare Consortium, including definitions that affect membership.

The amended rule affects Government Code §441.225(b).

§8.1. Definitions.

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

(1) Institution of higher education--An institution of higher education as defined by Education Code, §61.003, and a private or independent institution of higher education as defined by Education Code, §61.003.

(2) Annual Report Survey--A report submitted to the commission each year on the member institution of higher education's participation in TexShare programs, the member library of clinical medicine's participation in TexShare programs, the member library of nonprofit library collective's participation, or in fulfillment of a public library's system membership requirements.

(3) Commission--The Texas State Library and Archives Commission.

(4) Consortium--The TexShare Library Consortium.

(5) Director and Librarian--Chief executive and administrative officer of the commission.

(6) Public Library has the meaning assigned by Government Code, §441.122.

(7) Library of clinical medicine has the meaning assigned to Non-Profit Corporation by Government Code, §441.221.

(A) Extensive library services are defined as:

(i) Library is open and staffed a minimum of 45 hours per week; and

(ii) Staff includes a minimum of one full-time equivalent professional librarian (as defined in 13 TAC §1.84, relating to Professional Librarian); and

(iii) Library employs a library director for at least 40 hours per week in library duties; and

(iv) Services include circulation of materials, reference services, use of computers to access information sources, databases, or other similar services; and

(v) An institutionally-approved collection development policy updated at least every five years.

(B) Extensive collections in the fields of clinical medicine and the history of Medicine is defined as follows:

(i) Clinical medicine is defined as materials in the "W" category of the National Library of Medicine (NLM) classification scheme (www.nlm.nih.gov/clas/index.html).

(ii) History of Medicine is defined as:

(I) Materials fitting the scope of the NLM classification scheme (www.nlm.nih.gov/clas/index.html) under WZ-History of Medicine, Misc or in the NLM classification scheme under history of a particular medical subject (e.g. history of surgery (WO 11), history of dermatology (WR 11), history of gynecology (WP 11), etc.); or

(II) Unique archival materials (print materials, historical artifacts, and other resources) related to institutional history, or reflecting historically significant contributions of persons or institutions, or history of a particular area of health care.

(iii) "Extensive collections" is defined as a minimum of 12,000 library resources in the field of clinical medicine and history of medicine, in print and in electronic formats, comprised of books, journal titles, technical reports, videos, or databases.

(8) Public school--Any school accredited under Education Code, Subchapter D, Accreditation Status (§§39.071 - 39.076).

(9) Public school library--An organized collection of printed, audiovisual and/or computer resources in a public school or public school campus (elementary or secondary). A public school library makes resources and services available to all students, teachers, and administrators. Collections such as classroom "libraries" or collections of primarily textbooks or other similar classroom teaching materials are not public school libraries.

(10) Certified school librarian--A public school staff member holding a current school librarian certificate issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(11) Certified staff member--A public school staff member holding a current certificate, license, permit, or other credential issued by the State Board for Educator Certification under the authority of Education Code, Chapter 21, Subchapter B (§§21.031 - 21.058).

(12) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and the Internet community.

(13) Consortium membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(b)(2) or (3) of this chapter (relating to Consortium Membership and Affiliated Membership). Libraries meeting these requirements are referred to as "members" or "consortium members."

(14) Affiliated membership refers to membership held by those libraries meeting the eligibility criteria specified in §8.3(b)(1) of this chapter. Libraries admitted under this section are referred to as "affiliated members."

(15) Nonprofit library--A library not already qualified for consortium membership by virtue of being a public library, library of clinical medicine, or library affiliated with an institution of higher education that is:

(A) Established as a nonprofit corporation under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); or

(B) An administrative subdivision of a nonprofit corporation established under the Texas Nonprofit Corporation Law (Texas Business Organizations Code §22.001 et seq.); or

(C) Located in Texas and operated by a unit of local, state, or federal government; or

(D) Located in Texas and a designated tribal community library.

(16) Nonprofit library collective--Two or more nonprofit libraries that share a set of common interests and have a defined membership structure.

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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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.22, §4.31

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.22 and §4.31, concerning Transfer of Credit and Field of Study Curricula, without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5709). The Coordinating Board will not adopt proposed amendments to §4.28 that were published at the same time.

The intent of the amendments is to strike reference to a section of the Texas Higher Education Code repealed by Senate Bill (SB) 215, 2013, by the 83rd Texas Legislature, Regular Session and to ease the process for institutions' annual revisions to the core. Coordinating Board staff originally posted with the *Texas Register* an amendment to §4.28(h) to increase transparency of core completion to students and registrars by adding additional identifying numbers for certain types of courses in the core. However, based on public comments received (see summary below), staff recommended to the Committee on Academic and Workforce Success (CAWS) not to adopt the proposed amendment to §4.28(h) based on the public comments. The CAWS agreed with the staff recommendation and voted unanimously not to include the proposed amendment to §4.28(h).

Two comments were received in regard to the proposed amendment to §4.28(h). One comment was received from Becki Griffith, president of the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO) on behalf of the association. The other comment was submitted by Don A. Perry, Executive Director of Compliance and Policy Formation, Dallas Community College District, on behalf of the Dallas County Community College District.

Comment: In summary, both comments cautioned that the proposed numerical transcription of course type for the Component Area Option of the core curriculum would add complexity and confusion for students, advisors, and transcript evaluators and asked that the proposed amendment to §4.28(h) be stricken until further discussion and consideration occurs.

Staff response: Staff concurred that additional discussion and clarification was in the best interest of students and advisors and recommended that the amendments to §4.28(h) not be adopted at this time.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter S, §61.827, which provides the Coordinating Board with the authority to adopt rules to administer the section.

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-201405312
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: July 25, 2014
For further information, please call: (512) 427-6114

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SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.272, 4.274, 4.278

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§4.272, 4.274, and 4.278, concerning Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5710).

The purpose of the amendments was to align Chapter 4, Subchapter Q with statutory requirements of House Bill 5, 83rd Regular Session. Language was added limiting the number of dual credit courses a public community college may enter into an agreement to offer a high school located in the service area of another public community college to three courses per student per academic year. Language was removed that required a public community college to provide a letter to the Regional Council from a school district outside of the college's service area, to which the college offers dual credit courses, stating that the school district's local community college is not offering dual credit courses to their satisfaction and the school district invited the other community college to offer the course. Additionally, language was added to accurately reference the Southern Association of Colleges and Schools Commission on Colleges when used in the rule text throughout Chapter 4. The amended rules will affect public two-year colleges on or after the 2014 fall semester. The definition of Workforce Continuing Education Course was changed to maintain consistency throughout the chapter.

There were no comments received concerning these amendments.

The amendments are adopted under Texas Education Code, Chapter 61, Subchapter C, §61.061, which states that the board has the responsibility for adopting policies, enacting regulations, and establishing general rules necessary for carrying out the duties with respect to public junior colleges placed upon them by the legislature.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER E. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §21.136

The Texas Higher Education Coordinating Board (Board) adopts new §21.136, concerning the Texas B-On-Time Loan program, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6358).

This new section reflects provisions of Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session. The statute requires the Board, by rule, to establish and publish financial aid program allocation methodologies and develop procedures to verify the accuracy of the application of those methodologies by Board staff. Additionally, the statute requires the Board to engage institutions of higher education in a negotiated rulemaking process described in Government Code, Chapter 2008, Subchapters A and B in the development of such rules. The statute also states that tuition set-asides collected by public institutions of higher education shall be allocated only to those institutions. This new section was drafted and approved by the Negotiated Rulemaking Committee on B-On-Time (Tuition Set-Asides) on August 4, 2014. The report of the Negotiated Rulemaking Committee is available at the executive offices of the Board located at 1200 E. Anderson Lane, Austin, Texas.

Subsection (a) of this new section states that funds will be allocated to participating (public) institutions in proportion to the amount of tuition set-asides collected by each of those institutions for the preceding academic year. Subsection (b) of this new section states that details of the preliminary allocations will be shared with institutions for verification and comment before final allocations are posted on the Board's web site. Subsection (c) of this new section provides a specific deadline, March 15 at 11:59 p.m., for institutions to encumber program funds. Funds that are not encumbered as of that date are released for reallocation by the Board to other institutions. Subsection (d) of this new section describes the reallocation methodology, which is in keeping with the initial allocation methodology.

There were no comments received regarding this new section.

The new section is adopted under Texas Education Code, §56.303 which provides the Coordinating Board with the authority to adopt rules to implement the Provisions for the Toward Excellence, Access and Success (TEXAS) Grant Program.

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-201405314

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.226, §22.236

The Texas Higher Education Coordinating Board (Board) adopts amendments to §22.226 and §22.236, concerning the Provisions for the Toward Excellence, Access and Success (TEXAS) Grant Program, without changes to the proposed text as published in the May 23, 2014, issue of the *Texas Register* (39 TexReg 3945).

Changes to these sections were made in accordance with Senate Bill 215, passed by the 83rd Texas Legislature, Regular Session, which called for the Board, by rule, to establish and publish financial aid program allocation methodologies and develop procedures to verify the accuracy of the application of those methodologies by Board staff. In addition, Senate Bill 215 called for the Board to engage institutions of higher education in a negotiated rulemaking process as described in Chapter 2008, Government Code in the development of such rules. The TEXAS Grant rule amendments proposed for these sections were reviewed and approved by the Negotiated Rulemaking Committee on TEXAS Grants on April 30, 2014. The report of the Negotiated Rulemaking Committee is available at the offices of the Board located at 1200 E. Anderson Lane, Austin, Texas.

In particular, §22.226 is amended to include two new definitions related to the allocation process, regarding prior-prior year award amount and target award amount. Subsequent definitions in §22.226 were renumbered accordingly.

The amendments to §22.236(a) describe the TEXAS Grant allocation process, including the basis for allocation calculations. Also, in accordance with Senate Bill 215, §22.236(a)(2) lists the data elements for each student that are to be reported by institutions to enable Board staff to confirm the validity of the calculations, and §22.236(a)(3) indicates the Board will provide the results of the allocation calculations to institutions for review before the allocation amounts are officially announced.

The amendments to §22.236(b) provide a specific date (February 20) as a deadline for institutions to encumber program funds, eliminating language that referred to the use of a "date specified by Board staff via a policy memo" and adds language to address the process for reallocating available funds.

One comment was received from The University of Texas at Austin indicating that it supported the rule changes approved by the Negotiated Rulemaking Committee. The staff appreciated the feedback and made no further changes as a result of this comment.

The amendments are adopted under Texas Education Code, §56.303, which provides the Coordinating Board with the author-

ity to adopt rules to implement the Provisions for the Toward Excellence, Access and Success (TEXAS) Grant Program.

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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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: May 23, 2014
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 363. EXAMINATION AND REGISTRATION

22 TAC §363.11

The Texas State Board of Plumbing Examiners (Board) adopts an amendment to 22 TAC §363.11, concerning Endorsement Training Programs, without changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6011). The amended section sets forth the criteria for the Water Supply Protection Specialist endorsement examination pursuant to a petition submitted by Mr. Mark Roberts of the International Code Council.

Mr. Roberts has petitioned the Board to adopt an amendment to 22 TAC §363.11(c)(1) to include the International Plumbing Code's rainwater harvesting provisions to be used with or in addition to other code related materials in the 24 hour Water Supply Protection Specialist endorsement training program and the endorsement examination. The inclusion of the International Plumbing Codes rainwater harvesting provisions as reference and study material in the Water Supply Protection Specialist endorsement training will help Water Protection Specialist candidates apply a wider range of reference materials to be used to safely install rainwater harvesting systems in compliance with state and municipal codes.

The rule amendments are also necessary to provide greater clarity to 22 TAC §363.11(c)(1) and correct a typographical error.

No comments were received on the proposed amendment.

The amendment to 22 TAC §363.11 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this adopted amendment.

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

Filed with the Office of the Secretary of State on November 4, 2014.

TRD-201405256
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Effective date: November 24, 2014
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For further information, please call: (512) 936-5224

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22 TAC §363.13

The Texas State Board of Plumbing Examiners (Board) adopts an amendment to 22 TAC §363.13, concerning Training Program for Responsible Master Plumber Applicants, without changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6014). The amendments to subsection (d)(2), which sets forth the criteria and requirements of the Responsible Master Plumber 24 hour training program, are adopted in response to a petition for rule change submitted by Debbie A. Murphy.

The amendment addresses who may take the course to become a Responsible Master Plumber. The amendment would permit any individual to take the Responsible Master Plumber training class regardless of whether he or she has met the requirements to become a Responsible Master Plumber. This would permit any individual who is not a Responsible Master Plumber to take a Responsible Master Plumber training course at any point in his or her career. Permitting individuals to take this course fulfills the agency's mission to educate those interested in plumbing about the industry and how to properly operate a plumbing business.

No comments were received on the proposed amendment.

The amendment to 22 TAC §363.13 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article or code is affected by this adopted amendment.

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

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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Proposal publication date: August 8, 2014
For further information, please call: (512) 936-5224

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22 TAC §363.14

The Texas State Board of Plumbing Examiners (Board) adopts new 22 TAC §363.14, relating to guidelines to determine the fitness of a person who has been convicted of a crime. This rule is adopted with nonsubstantive changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6015).

These guidelines are issued by the Board to determine the fitness of a person who has been convicted of a felony or misdemeanor to perform the duties and discharge the responsibilities of registered and licensed individuals who perform plumbing and plumbing inspections. Under the authority of Chapters 53 and 1301 of the Texas Occupations Code, the Board may suspend, probate a suspension of, or revoke a registration, license, or endorsement, or deny a person the opportunity to take a licensing or endorsement examination on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the occupation of registered or licensed individuals performing plumbing and plumbing inspections.

No comments were received on the proposed new rule.

New 22 TAC §363.14 is adopted under and affects Chapter 1301 of the Texas Occupations Code. Texas Occupations Code §1301.251 requires the Board to adopt and enforce rules necessary to administer the Chapter 1301 of the Texas Occupations Code. Further, each licensing agency shall issue guidelines relating to the practice of the licensing authority pursuant to §53.025 of the Texas Occupations Code.

No other statute, article, or code is affected by this adopted new rule.

§363.14. Criminal Conviction Guidelines.

(a) Pursuant to Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and §363.2 of the rules of the Texas State Board of Plumbing Examiners (Board), these guidelines are issued by the Board to be used, in conjunction with Chapter 53 and Chapter 1301, §1301.4521 of the Occupations Code and Board Rule §363.2, by the Board's Enforcement Committee to determine the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections.

(b) Licensed individuals are usually required to perform plumbing or plumbing inspections without direct supervision of any other person and must be trusted to carry out their duties and responsibilities without risking the health, safety, welfare and property of the public. Plumber's Apprentices are usually required to be supervised by a licensed plumber. However, it is estimated that the majority of Plumber's Apprentices are working towards licensure, therefore, the same factors must be considered for registrants. The duties and responsibilities of individuals performing plumbing or plumbing inspections include, but are not limited to:

(1) entering persons' homes and places of business to perform or inspect plumbing work including, but are not limited to:

(A) private residences;

(B) apartment complexes;

(C) schools;

(D) child care facilities;

(E) elder care facilities;

(F) medical care facilities;

(G) financial institutions; and

(H) businesses where valuable merchandise is stored and sold.

(2) making personal contact with persons who have requested plumbing work to be performed or inspected, including elderly persons and minor children of the persons who have made the request;

(3) engaging in contractual and financial transactions with persons who have requested plumbing work to be performed;

(4) being entrusted by employers to be responsible for the employers' vehicles and tools necessary to perform plumbing or plumbing inspections.

(5) ensuring safety when working with hazardous, explosive or volatile materials;

(6) complying with laws, rules, ordinances and codes that regulate plumbing; and

(7) working with officials who are carrying out their duties to enforce laws, rules, ordinances and codes that regulate plumbing including:

(A) Field Representatives of the Board;

(B) Plumbing Inspectors; and

(C) other law enforcement officers.

(c) Due to the nature of the duties and responsibilities stated in subsection (a)(1) - (7), the Board has determined that the holder of any registration or license issued by the Board would have an opportunity to commit certain crimes while performing plumbing or plumbing inspections. The Board has determined that the following crimes directly relate to the duties and responsibilities of all individuals registered or licensed by the Board (list is not all inclusive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure, including:

(A) Aggravated Sexual Assault (victim of any age);

(B) Aggravated Rape (victim of any age);

(C) Sexual Assault (victim of any age);

(D) Rape (victim of any age);

(E) Statutory Rape;

(F) Indecency With a Child (including exposure);

(G) Prohibited Sexual Conduct;

(H) Sexual Performance by a Child;

(I) Possession or Promotion of Child Pornography;

(J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature);

(K) Kidnapping (with the intent to commit an illegal act of a sexual nature);

(L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature);

(M) Burglary (with the intent to commit an illegal act of a sexual nature);

(N) Indecent Exposure;

(O) Public Lewdness; or

(P) Improper Photography or Visual Recording.

(2) Any crime of a sexual nature listed in subsection (b)(1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure;

(3) Capital Murder;

(4) Murder;

(5) Criminal Negligent Homicide;

(6) Manslaughter;

(7) Aggravated Kidnapping;

(8) Kidnapping;

(9) Unlawful Restraint;

(10) Injury to a Child, Elderly Individual or Disabled Individual;

(11) Burglary of a Habitation;

(12) Burglary of a Building;

(13) Burglary of an Automobile;

(14) Robbery;

(15) Theft (felony);

(16) Fraud (felony);

(17) Forgery (felony);

(18) Arson;

(19) Aggravated Assault of a Police Officer (or other public official);

(20) Aggravated Assault;

(21) Assault;

(22) Illegal Drug Related Crimes (felony);

(23) Terroristic Threat; or

(24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(d) The Enforcement Committee shall use the following established levels of risks in determining the fitness of a person who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in the order of highest to lowest. The Enforcement Committee shall consider those applicants with convictions of a sexual nature or first degree felony to be the highest risk and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application to be the lowest risk.

(1) Level One - Applicants who have a conviction of a sexual nature listed in subsection (b)(1)(A) - (P), regardless of whether or not the convicted person is required to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure.

(2) Level Two - Applicants who have a conviction for a first-degree or second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed less than five years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed more than five years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(e) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(f) The Enforcement Committee shall use these guidelines and follow the requirements of Board Rule §363.2 when reviewing applications for registration, examination and renewal of registrations, licenses and endorsements, to determine the fitness of applicants.

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-201405261
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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For further information, please call: (512) 936-5224

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CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.14

The Texas State Board of Plumbing Examiners (Board) adopts amendments to 22 TAC §365.14, concerning Continuing Professional Education Programs, without changes to the proposed text as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6017). The amended rule sets forth the criteria adopted by the Board for Plumber's Continuing Professional Education (CPE) programs for the renewal of licenses and registrations issued by the Board

The amendments to §365.14 are adopted to implement new procedures to ensure that the CPE materials are approved by the Board in: (1) an expedited manner by eliminating a second proofing of the CPE materials by the Board and (2) by allowing the submittal of the completed CPE materials for proofing in an electronic format.

No comments were received on the proposed amendment.

The amendment to 22 TAC §365.14 is adopted under and affects Chapter 1301 of the Texas Occupations Code (Plumbing License Law). Plumbing License Law §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article, or code is affected by this adopted amendment.

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

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Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
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For further information, please call: (512) 936-5224

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 353. INTRODUCTORY PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §353.3

The Texas Water Development Board (board or TWDB) adopts an amendment to 31 TAC §353.3, relating to Board Meetings, to ensure consistency with recent statutory amendments made to Chapter 6, Texas Water Code, relating to the TWDB. The proposal is adopted without changes as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5304).

DISCUSSION OF THE ADOPTED AMENDMENT

The TWDB adopts the amendment to the existing rule related to Board Meetings. The amendment is necessary because the 83rd Legislature passed House Bill 4, the first article of which made changes to the administration of the TWDB. More specifically, §1.06 of the bill amended Texas Water Code §6.060 (relating to Board Meetings) to delete the requirement that the board meet at least once every other month and to provide that the board shall hold regular meetings and special meetings at times and places that the board decides are appropriate. The statute also deleted the office of the vice-chairman of the board and provided that the chairman may designate another board member to act for the chairman in the chairman's absence.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENT

Adopted Amendment to 31 TAC Chapter 353, Subchapter A (relating to General Provisions).

The adopted amendment to §353.3 (relating to Board Meetings) deletes the requirement that the board meet at least once every other month; provides that the board may hold special meetings at the times and places that the board decides are appropriate; provides that the chairman or the board member acting for the chairman shall give the other members reasonable notice of the special board meeting; and provides that the chairman may designate another board member to act for the chairman in the chairman's absence.

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the adopted rulemaking is to implement new, state statutory requirements imposed by HB 4 on the TWDB to change requirements for meetings and to eliminate the office of vice-chairman and to provide that the chairman may designate another board member to act for the chairman in the chairman's absence. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 4 on the TWDB to change requirements for meetings and to eliminate the office of vice-chairman and to provide that the chairman may designate another board member to act for the chairman in the chairman's absence. The adopted rulemaking would substantially advance this purpose by amending 31 TAC Chapter 363 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

No comments were received on the proposed rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapter 6.

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-201405316
Les Trobman
General Counsel
Texas Water Development Board
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Proposal publication date: July 11, 2014
For further information, please call: (512) 463-8061

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CHAPTER 356. GROUNDWATER MANAGEMENT

SUBCHAPTER A. DEFINITIONS

31 TAC §356.10

The Texas Water Development Board (board or TWDB) adopts an amendment to 31 TAC §356.10, relating to Definitions, to ensure consistency with recent statutory amendments made to Chapter 6, Texas Water Code, relating to the TWDB. The proposal is adopted without changes as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5305).

DISCUSSION OF THE ADOPTED AMENDMENT

The TWDB adopts the amendment to the existing rules related to Definitions. The amendment is necessary because the 83rd Legislature passed House Bill 4, the first article of which made changes to the administration of the TWDB. More specifically Section 1.01 of the bill amended Texas Water Code §6.052 (relating to Members of the Board; Appointment) to change the composition of the governing body of the agency from six members to three members. The former rule, which is amended by this adopted rule, refers to the governing body of the TWDB as having six members.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENT

Adopted Amendment to 31 TAC Chapter 356, Subchapter A (relating to Definitions)

The adopted amendment to §356.10 (relating to Definitions), amends the definition of "Board," for purposes of Chapter 356 (relating to Groundwater Management) by deleting any reference to the number of board members serving as the governing body of the state agency, the Texas Water Development Board. The amendment is necessary because the 83rd Legislature passed House Bill 4 which amended Texas Water Code §6.052 (relating to Members of the Board; Appointment) to change the composition of the board from six members to three members. The adopted amendment would implement this legislative change.

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the adopted rulemaking is to implement new, state statutory requirements imposed by HB 4 on the TWDB to change the composition of the governing body from six to three members. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 4 on the TWDB to change the composition of the governing body from six to three members. The adopted rulemaking would substantially advance this purpose by amending 31 TAC Chapter 363 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

No comments were received on the proposed rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapter 36.

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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Les Trobman
General Counsel
Texas Water Development Board
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For further information, please call: (512) 463-8061

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CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (board or TWDB) adopts amendments to 31 TAC §§363.1, 363.2, 363.33, 363.51, 363.731, 363.951, 363.953, and 363.955 and new §§363.1301 - 363.1312. Amended §§363.33, 363.51, 363.731 and 363.953 and new §§363.1302, 363.1304 - 363.1308 and 363.1311 are adopted with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5306). Amended §§363.1, 363.2, 363.951, and 363.955 are adopted without changes to the proposed text and will not be republished. New §§363.1301, 363.1303, 363.1309, 363.1310, and 363.1312 are adopted without changes to the proposed text and will not be republished.

The adopted amendments to §§363.1, 363.2, 363.33, and 363.51, relating to Financial Assistance Programs, ensure consistency with recent statutory amendments made to Chapter 15, Texas Water Code, relating to the establishment of the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT), and to Chapter 17, Texas Water Code, relating to Construction Contract Requirements, Inspection of Projects, and Certificates of Approval. The specific provisions being amended and the reasons for the amendments are addressed in more detail below.

The board adopts amendments to §363.731 of Subchapter G relating to Small Community Emergency Loan Program, to ensure consistency with recent statutory amendments to Chapter 17, Texas Water Code, relating to Construction Contract Requirements, Inspection of Projects, and Certificates of Approval. The specific provisions being amended and the reasons are addressed in more detail below.

The board adopts amendments to 31 TAC §§363.951, 363.953, and 363.955, of Subchapter I, relating to Pilot Program for Water and Wastewater Loans to Rural Communities, to ensure consistency with recent statutory amendments to Chapter 17, Texas Water Code, relating to Construction Contract Requirements, Inspection of Projects, and Certificates of Approval. The specific provisions being amended and the reasons are addressed in more detail below.

The board adopts a new Subchapter M, §§363.1301 - 363.1312, relating to the SWIFT and the SWIRFT, to implement certain recent statutory amendments to Chapter 15, Texas Water Code, Subchapters G and H relating to the SWIFT and the SWIRFT. These new rules are addressed in more detail below.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Legislature created the SWIFT and SWIRFT to ensure financial assistance is available to provide an adequate water supply for the future of this state. The SWIFT was created by the Legislature to serve as a water infrastructure bank in order to enhance the financing capabilities of the TWDB under constitutionally created programs and revenue bond programs. No financial assistance is provided from the SWIFT directly to political subdivisions or nonprofit water supply corporations. Instead, SWIFT provides a source of revenue or security for board financial programs and provides a cash flow mechanism under which money used in board programs can flow back to the SWIFT to provide protection for the SWIFT corpus. Money in the SWIFT will be available to provide support for low-interest loans, longer repayment terms for loans, incremental repurchase terms for projects in which the state owns an interest and deferral of loan payments. The financial assistance cannot be in the form of a grant. The SWIRFT was created by the Legislature for use in managing revenue bonds issued by the board that are supported by the SWIFT. The SWIFT and SWIRFT programs are solely for the purpose of supporting projects in the state water plan.

In the preamble and rule, reference is often made to the "SWIFT and SWIRFT," since financial assistance to political subdivisions will be provided from SWIRFT with support from SWIFT. SWIFT also may be used to support board programs in addition to SWIRFT to provide financial assistance for certain state water plan projects. Use of the phrases "SWIFT and SWIRFT," or "SWIFT or SWIRFT," in the preamble and rules is intended only to describe the programs and is not intended for any purpose to describe the movement of monies between the two funds. The use of this nomenclature is not intended to reflect the formal legal and tax structure of these programs.

The board is adopting the present rules to implement the SWIFT and the SWIRFT by creating a new subchapter in Chapter 363, relating to Financial Assistance Programs. By placing the SWIFT and SWIRFT into this chapter, the provisions of Chapter 363 will apply to the SWIFT and SWIRFT programs unless those provisions conflict with Subchapter M, relating to the SWIFT and the SWIRFT. This allows the board to use the procedures and practices common to many of the board's existing financial programs rather than to recreate them separately in the SWIFT and SWIRFT rules. Applicants will find the utilization of existing and understood practices more convenient and efficient, as opposed to having to navigate and understand a totally new rule and process. Because we are placing the SWIFT and SWIRFT program as a new subchapter in existing rules, to read and understand all of the rules that will apply to the program, Chapter 363, Subchapter M, relating to SWIFT and SWIRFT, must be read together with Subchapter A, relating to General Provisions. The board is currently examining its processes and procedures for all of its financial programs looking for efficiencies and process improvements. The board intends to continually seek to enhance our processes to be as efficient as possible, consistent with our statutory duties and fiduciary responsibilities.

The executive administrator envisions that the application process for SWIFT and SWIRFT loans will function similar to the process for the existing Water Infrastructure Fund program, as modified by any process improvements. On a schedule specified by the board, the TWDB will announce that they will be taking applications for SWIRFT/SWIRFT loans. As it is currently structured in the Water Infrastructure Fund program, the executive administrator anticipates receiving an initial abridged application and longer application at the appropriate time. The executive administrator will develop a prioritized list of applications based on the criteria specified in §363.1304. The prioritized list of projects, as developed by the executive administrator, will go to the board for deliberation and preliminary decision. Those projects that are selected by the board for funding may be required to submit additional information as part of the due diligence process. The financial application will then be subject to the executive administrator's traditional analysis for project viability, ability to repay the loan, and other considerations.

The executive administrator envisions that once the staff analysis is complete, based on the application and due diligence process, the application will go to the board for their deliberation and decision. If the board has made a commitment to fund the project, similar to the current process, the applicant will ex-

ecute a financing agreement that allows the board to include the applicant's requested amount in the TWDB's bond issue and that specifies when the applicant must close on the loan with the board. The board may require that the applicant must close within a very short time of the board obtaining the proceeds from its bond issue that it will use to fund the loan with the applicant. The timing between commitment and closing is discussed in further detail in the section by section analysis. Interest rates and the terms and conditions of the loans and any repurchase agreements will be developed on a case-by-case basis and will depend on what is necessary to meet the immediate and long-term needs for water as contained in the state water plan existing at that time, what is necessary to preserve the long-term viability of the SWIFT and SWIRFT program, and current market conditions, among other considerations.

The executive administrator anticipates, prior to the first round of SWIFT and SWIRFT funding, developing an instructional and Frequently Asked Questions document that will further detail the application and due diligence process.

SECTION BY SECTION DISCUSSION OF ADOPTED RULE

Adopted Amendments to 31 TAC Chapter 363, Subchapter A (relating to General Provisions).

The adopted amendment to §363.1 (relating to Scope of Subchapter) adds the State Water Implementation Fund for Texas and the State Water Implementation Revenue Fund for Texas to the list of financial assistance programs covered by Chapter 363. The change is required because the board is implementing these new financial assistance programs by adding a Subchapter M to Chapter 363.

The adopted amendment to §363.2 (relating to Definitions of Terms) adds the acronym SWIFT for the State Water Implementation Fund for Texas and the acronym SWIRFT for the State Water Implementation Revenue Fund for Texas to the definitions used in Chapter 363 in order to have a convenient way to refer to these programs throughout the Chapter.

The adopted amendment to §363.33 (relating to Interest Rates for Loans and Purchase of Board's Interest in State Participation and Board Participation Projects) adds loans from the SWIRFT to the list of loan financial programs for which the board will establish lending rate scales, in order to cover the new financial program established by House Bill 4, 83rd Leg., R.S., 2013, (HB 4). Non-substantive changes were also made to clarify that the section covers interest rates for both state participation and board participation programs.

The adopted amendments to §363.51 (relating to Inspection during Construction) adds the phrase "provisions for environmental mitigative measures," in order to be consistent with §363.731. The requirement that the project engineer give assurance that the project is constructed in accordance with sound engineering principles is deleted for consistency with Texas Water Code §§17.183(a)(5)(C), 17.185(a), and 17.187. The adopted section also adds the requirement that the political subdivision or nonprofit water supply corporation must take corrective action on a project as necessary to complete the project in accordance with the approved plans and specifications, in order to be consistent with §363.731, (relating to Inspection During Construction). A non-substantive revision to the title of this section is adopted.

The adopted amendments to §363.731 (relating to Inspection During Construction) delete the requirement that the project engineer give assurance that the project is constructed in accordance with sound engineering principles for consistency with Texas Water Code §§17.183(a)(5)(C), 17.185(a), and 17.187.

The adopted amendment to §363.951 (relating to Construction Contract Requirements) adds the requirement that the executive administrator certifies that work on construction of a project has been completed in accordance with the approved plans and specifications, as well as deleting the requirement that the certification include that the work was done in accordance with sound engineering principles and practices, in order to implement Texas Water Code §17.183(a)(5)(C).

The adopted amendment to §363.953 (relating to Inspection of Projects) deletes the requirement that the project engineer give assurance that the project is constructed in accordance with sound engineering principles for consistency with Texas Water Code §§17.183(a)(5)(C), 17.185(a), and 17.187. The rest of that section is reworded for consistency with §363.51 and §363.731.

The adopted amendments to §363.955 (relating to Certificate of Approval) adds the words, "and specifications," and deletes "sound engineering principles," in order to implement Texas Water Code §17.187.

Adopted Amendment to 31 TAC Chapter 363 by addition of a New Subchapter M (relating to State Water Implementation Fund for Texas and State Water Implementation Revenue Fund for Texas).

New §363.1301 (relating to Scope of Subchapter M) is adopted to specify the scope and coverage of the Subchapter M. Subchapter M governs the board's new financial program to provide loans to political subdivisions and nonprofit water supply corporations to finance water management strategies in the state water plan. Subchapter A of Chapter 363 will also apply to the program except to the extent there is a conflict with Subchapter M, in which case Subchapter M will apply.

New §363.1302 (relating to Definition of Terms) is adopted to provide definitions of terms used throughout Subchapter M.

The adopted definition of "Agricultural water conservation" is defined by referring to the board's existing Agricultural Water Conservation Program. Those types of projects covered by the Agricultural Water Conservation Program would also be eligible for funding under the SWIFT and SWIRFT loan program if it were otherwise qualified, e.g. the project was a water management strategy in the state water plan. In keeping with that definition and Texas Water Code §17.898(a)(5), preparation and maintenance of land to be used for brush control activities in areas of the state where those activities in the board's judgment are effective would also be eligible for SWIFT and SWIRFT loan funding.

The adopted definition of "Agricultural irrigation project" includes projects on agricultural lands that improve water delivery or application efficiency. The adopted definition would allow for new water sources such as a new well, as part of an agricultural irrigation project. Also included in the adopted definition are projects for new irrigation systems. Finally, the adopted definition would also cover meters within the definition of an agricultural irrigation project. To be eligible for SWIFT/SWIRFT funding, the project would have to be included in the state water plan. To be considered as contributing towards the 20% requirement of Water Code §15.434(b)(2), the project would have to be designed for water conservation or reuse.

The adopted rules define "Alternate facility," "Excess capacity," and "Existing needs," consistent with the use of those terms

for the board's existing state participation program, 31 TAC §§363.1001 - 363.1017.

The adopted rule defines "Historically Underutilized Business" consistent with the definition in Texas Water Code §15.431, which references §2161.001, Government Code, and the implementing regulations of that section. Information on the state's Historically Underutilized Business program is available on the Comptroller's web site at http://www.window.state.tx.us/procurement/prog/hub/.

The adopted rule would define "Reuse" as the beneficial use of groundwater or surface water that has already been beneficially used because this is the definition used in the state water plan and the second use of water is required to be beneficially used as well as the first. See Water for Texas 2012, pages 170 and 249. This definition would include both direct reuse, where water that has been used once is treated and then reused, and indirect reuse where the once used water is treated, discharged to a surface water body or injected into an aquifer, and then retrieved at a later time.

The adopted rule would define "Rural" as required by Texas Water Code §15.434(b)(1)(A), which is to use the definition of "rural political subdivisions" found in Texas Water Code §15.992. The adopted rule uses that definition but further specifies that the board will use the most current data available from the U.S. Bureau of the Census or board-approved projections for the population figures.

The adopted rule would define "Water conservation" consistent with the definition in the state's best management practices guide for water conservation, first developed by the Water Conservation Implementation Task Force in 2004 and since maintained by the Texas Water Development Board pursuant to Texas Water Code Chapter 10, except that the phrase, "or increase the recycling and reuse of water" used in the best management practices guide is deleted from the definition. Texas Water Code §15.434(b)(2) uses "water conservation" and "reuse" as mutually exclusive terms. In light of this statutory language, the board's adopted rule continues the distinction.

The adopted rule defines "Water plan project" in a manner consistent with the use of the term in the state water plan and common usage among water professionals dealing with water resources planning in Texas.

The adopted rule defines "Water supply need" in a manner consistent with the use of the term in the state water plan and common usage among water professionals dealing with water resources planning in Texas and consistent with the use of the concept in Texas Water Code, Chapter 16, Subchapter C (relating to Planning).

Adopted §363.1303 (relating to the Prioritization System) provides a prioritization system required by Texas Water Code §15.437. The processing of applications and the steps in the adopted prioritization system is similar to the functioning of the prioritization system for the current Water Infrastructure Fund of §363.1207, but dates and timing of SWIFT and SWIRFT applications will not be fixed by rule to give the board additional flexibility in the timing of when it will make funds available. The actual factors to be evaluated in the prioritization are as required by HB 4. The adopted rule indicates that the board will identify the amount of funds available from SWIFT and SWIRFT for new applications by category. Categories may include: state participation; water infrastructure; deferred water infrastructure; rural political subdivisions or agricultural water conservation; and agricultural irrigation projects, water conservation, or reuse.

Adopted §363.1304 (relating to Prioritization Criteria) incorporates a priority criteria into the SWIFT and SWIRFT rules required by Texas Water Code §15.437. The adopted criteria provide for consideration of the various statutorily required factors, giving the most weight to those factors required by statute to receive the highest consideration. The adopted rules would implement the criteria for the local contribution to finance the project and the criteria related to federal funding for the project being used or sought by combining those two criteria into one category for obtaining points. In keeping with Texas Water Code §15.437(d)(6), the adopted rule has a criteria relative to water conservation. For municipal projects, the applicant can score points by demonstrating that they have already achieved significant water conservation savings or that significant water conservation savings will be achieved by implementing the proposed project. Municipal projects can also score points for achieving the water loss threshold that will be set by board rules in another board rulemaking proceeding roughly simultaneous with this rulemaking. While the adopted priority system does not have criteria for projects that serve rural political subdivisions, the board is of the opinion that many rural political subdivisions will be able to obtain points for the project meeting the needs of a high percentage of the water supply needs of the water users to be served. In addition, projects that serve rural populations may also be able to receive points in the diverse urban and rural category, or the regionalization category. As an example, a rural project that provides 100 percent of the water supply needs of the water users and that links five separate rural political subdivisions together in a regionalization project would receive 30 points for the high percentage of need category and 20 points for the regionalization criteria, for the maximum of 50 points for those factors receiving the highest consideration. That rural project would receive more points than an "urban" project that served a large population but only met 50 percent of the water supply needs and did not provide for regionalization or serve a diverse urban and rural population. Actual scoring of a specific application will be based upon all relevant facts that weigh into a project's scoring.

Adopted §363.1305 (relating to Use of Funds) incorporates restrictions on the use of funds provided by Texas Water Code §15.474. The board expects that the terms of the financial assistance provided to applicants will be tailored to best fit the needs of the applicants and to benefit the long-term viability of the fund. The board expects that the terms of the financial assistance will change based on each round of applications. Interest rates on the loans provided to applicants under this program will depend in part on the board's cost of funds as the board issues bonds. Because the interest rate that the bond market charges to the board will vary over time, the interest rate that the board offers political subdivisions will also vary over time. In addition the amounts and types of funding provided to political subdivisions and nonprofit water supply corporations in preceding fundings affect the amounts and types of funding that can be provided to subsequent applicants while still protecting the corpus of the fund and the board's ability to offer financing on attractive terms.

Adopted §363.1306 (relating to Interest Rates on Loans) identifies the timing and general method that the board would use to set the interest rates for SWIFT and SWIRFT project funding and payment deferrals. The adopted provision is similar to the method for setting interest rates for the Water Infrastruc-

ture Fund, see 31 TAC §363.1205 (relating to Interest Rates for Loans) modified as necessary to fit the requirements of HB 4.

Adopted §363.1307 (relating to Pre-design Funding Option) sets out the requirements for projects under this Subchapter to utilize the pre-design funding option. The adopted provision is similar to how this option is handled in the Water Infrastructure Fund, see 31 TAC §363.1206 (relating to Pre-design Funding Option).

Adopted §363.1308 (relating to Board Participation Program) sets out the requirements for projects where the applicant desires the board to acquire an ownership interest in the project that the applicant will buy back over time. The requirements and terms are similar to the board's existing state participation program. Non-substantive changes were also made to clarify that the section refers to the Board Participation program under HB 4.

Adopted §363.1309 (related to Findings Required) states the findings by the board that are required prior to approval of an application for financial assistance under the SWIFT and SWIRFT program.

Adopted §363.1310 (related to Action of the Board on Application) sets out the board's range of options in acting on an application. The adopted rule states that the commitment will include a date after which the financial assistance will no longer be available. The board did not set a specific date by rule in order to retain some flexibility in adjusting the time period. The board is of the opinion that the adopted rule would allow the board to make commitments on individual projects over multiple years with specific take down amounts each year, with the interest rate for each take down determined by the debt service schedule in effect at the time. The board is of the opinion that multi-year take downs will be a beneficial option for funding larger projects with high capital costs and longer construction schedules. Once the board has made a commitment, the applicant will execute a financing agreement that will specify when the loan must close. The board anticipates that the applicant must close within a very short time of the board obtaining the proceeds that it will use to fund the loan. The board recognizes that any undue delay between the board's obtaining funds through a sale of its bonds and closing loans with political subdivisions for their water projects has a negative impact on the overall capacity of the fund and the board is committed to minimizing those negative impacts.

Adopted §363.1311 (relating to Rural and Water Conservation Reporting) sets out how the board intends to report and account for the project funds: (1) not less than 10% of which support projects for rural political subdivisions and agricultural water conservation, and (2) not less than 20% of which support projects for water conservation and reuse, including agricultural irrigation projects which are designed for water conservation and reuse. This section is in part to implement Texas Water Code §15.434(b). The board understands that the percentages given in the statute are intended as a floor and not a ceiling, meaning that the board is not limited to funding only 10% of total project funds for rural and agricultural water conservation, or only funding 20% of total project funds for water conservation and reuse. If applicants submit sufficient eligible rural projects, the board could fund more than 10% rural projects, for example. The same is true for water conservation and reuse projects. The board intends to undertake to apply funding to these percentages by a very aggressive marketing and outreach program to ensure that potential applicants for all of these special classes of projects know the requirements and benefits of the programs. The board also intends to work with the regional water planning groups to ensure that they know about the programs and the requirements for either amending the regional water plan to include such projects or to include these types of projects in the next round of regional planning. The board does acknowledge that the SWIFT and SWIRFT program is a voluntary program for loaning money to political subdivisions and nonprofit water supply corporations.

The adopted rule would require the executive administrator to assign costs to the specified categories, e.g. rural political subdivisions, etc. when determining if any project funds count towards the requirements of Texas Water Code §15.434(b). Any costs that are shared would be proportionally allocated. For example, for a project that served a diverse urban and rural area, the executive administrator would first decide which costs are associated with the urban area and which costs are associated with the rural area. For the remaining costs that are shared by both areas, the percentage allocated to rural would be the ratio of rural costs to the total of direct urban and rural costs. The board considered proposing a rule with a more detailed description of how it would allocate costs. In the end the board decided that no one method could cover every possible situation. Therefore, the board decided to adopt a rule that provides the executive administrator with some discretion in that calculation, coupled with the report to the Legislature as required by statute. The board will report the amount of funds used to support rural, agricultural water conservation, water conservation, agricultural irrigation projects, and reuse projects along with an explanation for the allocation on the board website along with the other information required by Texas Water Code §15.440.

Adopted §363.1312 (relating to Reporting Requirements Regarding Historically Underutilized Businesses) sets out a requirement that political subdivisions and nonprofit water supply corporations report to the executive administrator the use of historically underutilized businesses that worked on the SWIFT or SWIRFT funded project prior to the executive administrator issuing a certificate of completion. This reporting is intended to allow the executive administrator to then be able to report this information to the State Water Implementation Fund for Texas Advisory Committee as required by Texas Water Code §15.438(n)(2).

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the adopted rulemaking is to implement new, state statutory requirements imposed by HB 4 on the Texas Water Development Board to provide financing options for projects in the state water plan through the provision of SWIFT and SWIRFT Funds. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 4 on the Texas Water Development Board to provide financing options for projects in the state water plan through the provision of SWIFT and SWIRFT Funds. The adopted rulemaking would substantially advance this purpose by amending 31 TAC Chapter 363 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENT

Public hearings on the proposed rule were scheduled and held: on July 24, 2014, at Texas A&M University - San Antonio, One University Way, San Antonio, Texas 78224 at 1:00 p.m.; on August 13, 2014, at the McNease Convention Center, 500 Rio Concho Drive, San Angelo, Texas 76903 at 10:00 a.m.; on August 21, 2014, at the University of Texas at Arlington Research Institute, 7300 Jack Newell Boulevard South, Fort Worth, Texas 76118 at 7:00 p.m. Twenty-two individuals and organizations made oral comments at the public hearings.

Written comments were received from: The State Water Implementation Fund for Texas Advisory Committee; Representative Lon Burnam; Martin A. Hubert, Deputy Comptroller and the Texas Comptroller's designee on the State Water Implementation Fund for Texas Advisory Committee (Comptroller); American Council of Engineering Companies - Houston (ACEC); Brushy Creek Regional Utility Authority (Brushy Creek); Central Texas Water Coalition; City of Abilene (Abilene); City of Austin and Austin Water Utility (Austin); City of Brady (Brady); City of Corpus Christi (Corpus Christi); City of Houston (Houston); Clean Water Action; Climate Change Now Initiative; Coastal Bend Sierra Club; Environment Texas; Galveston Bay Foundation; Greater Texoma Utility Authority (GTUA); H_2O4Texas; Hays Caldwell Public Utility Agency (HCPUA); League of Independent Voters of Texas; Lower Colorado River Authority (LCRA); National Wildlife Federation (NWF); North Fort Bend Water Authority (NFBWA); North Harris County Regional Water Authority (NHCRWA); North Houston Association (NHA); North Texas Municipal Water District (NTMWD); Population Media Center - Texas Chapter (Population Media Center); Region H Water Planning Group (Region H); Region M Water Planning Group (Region M); Rio Grande Regional Water Authority; San Antonio Water System (SAWS); San Jacinto River Authority (SJRA); Sierra Club - Lone Star Chapter (Sierra Club); Tarrant Regional Water District (TRWD); Texas Association of Builders (TAB); Texas Chemical Council (TCC); Texas Citrus Mutual; Texas Drought Project; Texas Farm Bureau; Texas Parks and Wildlife Department (TPWD); Texas Rural Water Association (TRWA); Texas & Southwestern Cattle Raisers Association; Texas Water Conservation Association (TWCA); Texas Water Infrastructure Network (TxWIN); The Nature Conservancy (Nature Conservancy); Upper Trinity Regional Water District (UTRWD); U.S. Capital Advisors; Water Smart Software; West Harris County Regional Water Authority (WHCRWA); and fifty-eight individuals. In addition to their organizations comments, Environment Texas submitted a written petition signed by 6,062 individuals; the Sierra Club - Lone Star Chapter submitted a letter on behalf of 1,535 individuals; and the National Wildlife Federation submitted a letter on behalf of 1,187 individuals. Environment Texas submitted a letter also signed by Texas Rivers Protection Association; Texas River School; Greater Edwards Aquifer Alliance; Environmental Defense Fund; Bayou City Outdoors; North Central Texas Communities Alliance; Medina County Environmental Action Association; Houston Climate Protection Alliance; Rio Grande International Study Center; Bexar Audubon Society; Jung Ko, PLLC; American Institute of Architects Houston COTE; Pinot's Palette Alamo Heights; Lamar Bruni Vergara Environmental Science Center, (collectively, Environment Texas).

RESPONSE TO COMMENTS

General Comments

Comment

The State Water Implementation Fund for Texas Advisory Committee commended the board on the open and thorough process that it used to produce and receive comments on the proposed HB 4 rules. They stated that the draft rule generally follows the intent and expectations of the Legislature regarding Texas Water Code §15.434(b) and 15.437. The Advisory Committee further commented that the proposed rule's general approach was sound and not in need of major revisions.

Response

The board appreciates these comments. The board has not made any changes in response to these comments.

Comment

NWF, Nature Conservancy, NHCRWA, Region H, SAWS, Sierra Club, Texas and Southwestern Cattle Raisers Association, Texas Farm Bureau, TPWD, and TRWA expressed their appreciation for the inclusive and transparent stakeholder process that the board used in the development of the rule package. Several of these organizations specifically mentioned the extensive public hearings held in San Antonio, San Angelo, and Forth Worth to take comment on the proposed rule. H_2O4Texas, NHCRWA, and TAB thanked the board for diligently collecting stakeholder feedback from across the state.

Response

The board appreciates these comments. No changes were made in response to these comments.

Comment

Texas and Southwestern Cattle Raisers Association commented that they support the rule as proposed.

Response

The board appreciates the comment. No changes were made in response to this comment.

Comment

Representative Lon Burnam, Clean Water Action, Galveston Bay Foundation, National Wildlife Federation, Nature Conservancy, Population Media Center, Region H, Sierra Club, TPWD, TRWA, and 2,725 individuals appreciated and supported the board's statement of its understanding that the statutory 10% "set-asides" for rural political subdivisions and agricultural water conservation projects and the 20% for water conservation and reuse are intended as a floor and not a ceiling.

Response

The board appreciates these comments. No changes were made in response to these comments.

Comment

Austin, H_2O4Texas, SAWS, TAB, TCC, TRWD, and TWCA commented that the board should consider adopting the proposed rules on an interim basis with a definite commitment to revisit them no later than 18 months after the initial adoption. In their view this would allow an opportunity to assess the effectiveness of the rules, receive public input, and make potential refinements of the rules, if needed, after the first round of funding of projects has been administered under the program. H2O4Texas commented that the TWDB is also in the process of promulgating rules regarding water loss audits. The HB 4 rules would award prioritization points for meeting the thresholds established in the water loss audit rules. The uncertainty regarding how these two rules will work together is seen by H_2O4Texas as an additional reason to adopt the HB 4 rules on an interim basis. NWF and Sierra Club commented that the TWDB should provide opportunities to revisit the rules once the implementation process has matured and becomes better understood.

Response

The board is willing to engage in an examination of the effectiveness of the rules after some experience has been gained with actual funding of projects and implementation of the rules is better understood. The board will do this transparently with stakeholder input; however, the board declines to lock themselves into any specific time frame for this process. Because of the flexibility built into the rules, many changes to the funding process can be made without changes to the rule. The board might decide that changes are immediately necessary well before the 18-month suggested deadline, or the board may want to have several rounds of funding before taking up the rules again. As the board and the public gain experience with the rules and the practical implementation of the program, the board will remain open to public input regarding the need for rule changes. Finally at any time interested persons may petition the TWDB to adopt a rule under Government Code §2001.021. No changes to the proposed rule were made in response to this comment.

Comment

Abilene, NTMWD, SAWS, TRWD, and TWCA commented that the TWDB should share information regarding the likely mix of funding for different programs, the associated subsidies, and how the TWDB will determine the subsidies and potential range of subsidies.

Response

The TWDB plans to provide a range of the subsidies or minimum subsidy that will be available for each funding structure under SWIRFT with the solicitation of applications for the initial and subsequent rounds of state water plan funding. The TWDB expects that the terms of the financial assistance provided to applicants will be tailored to best fit the needs of the applicants and to benefit the long-term viability of the SWIRFT. The TWDB also expects that the terms of the financial assistance will change based on each round of applications. Interest rates on the loans provided to applicants under this program will depend in part on the TWDB's cost of funds as the TWDB issues bonds. Because the interest rate that the bond market charges to the TWDB varies over time, the interest rate that the TWDB can offer to political subdivisions and nonprofit water supply corporations will similarly vary. As the TWDB funds more state water plan projects with SWIRFT funds, the types and amount of future funding provided to political subdivisions and nonprofit water supply corporations will be affected by previous fundings, and the investments that the Texas Treasury Safekeeping Trust Company has been able to make with the corpus of the SWIFT.

The TWDB does plan to develop information on the practical aspects of applying for funding. For applicants who are trying to determine the best TWDB program to access or the likely interest rate and other terms of a SWIFT/SWIRFT financial package, the TWDB strongly encourages applicants to meet with the appropriate TWDB Regional Water Planning and Development Team at a pre-application meeting to gather this information. No changes to the proposed rules were made in response to these comments.

Comment

TRWD and TWCA commented that funds should be delivered to the project owner or sponsor upon issuance, which would make funds available prior to soliciting bids for construction, and eliminate requirements that funds be placed in escrow.

Response

TWDB rules in 31 TAC Chapter 363, Subchapter A, provide the current mechanism for the release of funds that is consistent with the agency's statutory duties and fiduciary responsibilities. These rules provide for the release of construction funds from a project owner's escrow account to the project owner's construction account upon submittal of statutorily required bid documents and prior to the project owner issuing the notice to proceed. As a result, funds cannot be made available to the project owner or sponsor prior to the solicitation of bids for construction. The project owner will have access to the funds prior to the start of construction and the project owner is responsible for managing those construction funds in relation to its contractor schedule. No changes to the proposed rules were made in response to this comment.

Comment

TRWD commented to encourage the board to continue to finance real property acquisition, including reservoir sites, transmission rights-of-way, and other real property necessary for water supply project.

Response

The board appreciates the comment. The rule does not change the current practice of financing real property acquisition. No changes were made in response to this comment.

Comment

TxWIN commented that the proposed rules do not include language for encouraging participation in the procurement process by companies domiciled in the state or that employ a significant number of residents in this state. TxWIN commented that the

TWDB and state legislature have a duty to promote a competitive and transparent bidding and procurement process for the state's water infrastructure. TxWIN indicated it will work to address this issue in the near term with the SWIFT Advisory Committee and the TWDB. TxWIN further suggested changes to the TWDB's oversight of the bidding process and construction activities for projects utilizing TWDB funding.

Response

The executive administrator continues to evaluate the practices and policies of the TWDB in order to improve efficiency for all of the agency's financial programs. The TWDB seeks to work within its statutory authority and balance an appropriate amount of oversight with local responsibility. No changes to the proposed rules were made in response to these comments.

Comment

Sierra Club commented that it supports the agency's decision to utilize existing practices common to other TWDB financial programs where they don't conflict with HB 4. Sierra Club supports keeping the rules and structure to a minimum at this time. The Sierra Club commented that any potential non-rule program changes should be made available to a broad range of stakeholders for input.

Response

The board appreciates the comment. The executive administrator will seek stakeholder input on major non-rule changes. No changes have been made in response to this comment.

Comment

Galveston Bay Foundation, NWF, Sierra Club and one individual commented on how the board might make funds available to the 10% and 20% "set-aside" categories. NWF commented that the board should use the project categorization process as an additional mechanism for ensuring that deserving water conservation projects receive funding. NWF understands that the board wants to retain flexibility. NWF suggested the board employ that flexibility to categorize funding in a way that ensures, to the maximum extent reasonable, that all deserving water conservation projects receive funding. One individual commented that there needs to be a method to put conservation and reuse into a separate category and allocate 20% of each year's budget toward this category and use a similar method with the 10% category. Galveston Bay Foundation commented that the board needs to clarify how the 20% funds for conservation or reuse and 10% funds for rural and the prioritization criteria will work together. Sierra Club commented that for each application cycle the board should calculate amounts for categories as "not less than 20% to support projects, including agricultural irrigation projects, that are designed for water conservation or reuse, subject to receipt of eligible applications," and "not less than 10% to support projects for rural subdivisions or agricultural water conservation, subject to receipt of eligible applications." Funding for other categories should be identified as amount "up to" specific dollar figures, with the understanding that these amounts are subject to revision after applications for the set-aside categories have been reviewed and decisions made on those applications.

Response

The board acknowledges that the rules do not address how it will categorize funding prior to accepting abridged applications for project prioritization for funding. The board is developing those procedures in parallel to the rule development. This may or may not result in allocating a specific amount to the 10% and 20% categories. By keeping these procedures out of the rule, the board is able to quickly adapt to changing circumstances and revise the procedures as necessary to meet its statutory duties. No changes were made to the rule as a result of the comments.

Comment

Sierra Club commented that the regional planning groups' standards for prioritization of water projects need to be adopted by the TWDB through a rulemaking process and not just adopted by an item at a board agenda meeting. The uniform standards would benefit from the type of open stakeholder involvement and discussion that the board's HB 4 rule went through. Sierra Club does not believe that the criteria of sustainability and viability, especially in regard to climate change and variability and direct consideration of a project's environmental impacts, were adequately addressed during development of the uniform standards.

Response

HB 4 in several places requires the board to adopt rules to implement the statute, e.g. Texas Water Code §15.439, but does not require the board to promulgate rules adopting the "uniform standards" used by the regional water planning groups during their prioritization process. Rather, Texas Water Code §15.436(c) only requires the board to approve those standards. The board considered the uniform standards during its December 5, 2013, board meeting and received public comment at that time. The board declines to presume the authority to adopt rules when the Legislature has expressly used other language for the board's action. The board does encourage regional water planning groups to revisit the regional water planning groups criteria as necessary to ensure projects are appropriately scored at the regional level. No changes were made in the rule in response to this comment.

Comment

SAWS commented that the board should keep the rules broad enough to provide the option to fund loans involving some components of a public-private partnership.

Response

The board is of the understanding that in this respect the rules are as broad as the statute. Financing under HB 4 can only be provided to a political subdivision or a nonprofit water supply corporation, as defined in the statute. However, this does not preclude certain public private partnerships where the public entity's funding comes from the board and the remainder comes from a public private partnership arrangement between the public project sponsor and a private entity or entities. The board could also provide the financing for a public entity to purchase a privately developed project. The project would, of course, have to meet all statutory and rule requirements. No changes were made to the rule in response to this comment.

Texas Water Code §17.183(8) - American Iron and Steel

Comment

TxWIN commented that the proposed rules do not address the U.S. iron and steel and manufactured goods as required by HB 4. SJRA commented that the TWDB's guidance document for the U.S. iron and steel and manufactured goods does not indicate a procedure for board concurrence on exceptions and requests an amendment to the guidance document or inclusion in the proposed rules.

Response

Texas Water Code §17.183(a)(8) requires that financial assistance applicants receiving funds under that subchapter from the TWDB include in their construction contracts for water infrastructure a requirement that such contracts include a provision stating that iron and steel products and manufactured goods used in the project be produced in the United States, subject to several statutory exceptions.

Further, HB 4 defines the terms and describes the exemptions for the use of U.S. iron and steel and manufactured goods requirements but is not prescriptive nor does it require the TWDB to document compliance. The TWDB developed a procedure with stakeholder input to include language in construction contracts and on the general notes plan sheets. It is the responsibility of each recipient of financial assistance to enforce the provisions of its own construction contracts to ensure compliance with this requirement. No changes to the proposed rules were made in response to this comment.

Comment

Sierra Club commented that Property Assessed Clean Energy (PACE) projects could be funded by SWIFT/SWIRFT if a political subdivision would be the lender for the PACE project. Sierra Club encouraged the TWDB to develop and distribute guidance documents on how this new opportunity might be used effectively.

Response

The board does not believe that the adopted rule prohibits the use of SWIFT and SWIRFT funding for PACE projects; however, the PACE project would have to meet the statutory requirements of HB 4. The TWDB would have to take an application from a political subdivision or nonprofit water supply corporation that would become the local lender for the PACE project. The TWDB could not directly loan money to the businesses that participated in the local PACE project. The project would have to be included in the state water plan. The financial assistance would be in the form of a loan to the local political subdivision or nonprofit water supply corporation, and the TWDB could only loan money for the water conservation component of the PACE project. Energy efficiency measures would have to be funded through other means. The board is open to working with political subdivisions or nonprofit water supply corporations that want to explore developing a PACE program. No changes in the rule were made in response to this comment.

Comment

Texas Drought Project and 17 individuals provided comments that suggested specific additional strategies that could be undertaken by individuals or local water suppliers to increase water conservation.

Response

The TWDB lacks authority to require individuals or a water supplier to adopt specific water conservation strategies. The TWDB encourages these individuals to take their suggestions to their local officials for consideration for incorporation into their local water conservation plans. If local political subdivisions wish to apply for SWIFT/SWIRFT funding to implement all or part of their local water conservation plan, the TWDB reminds them to work with their regional water planning group to see that it is incorporated into the regional and state water plans as a water management strategy. This is necessary in order to qualify for funding under the SWIFT/SWIRFT program. No changes to the rules were made in response to these comments.

Comment

Eight individuals provided comments that argued either for or against using specific technologies as water supply strategies. Central Texas Water Coalition, Climate Change Now Initiative, League of Independent Voters of Texas, and four individuals provided comments related to improvements to the water planning process.

Response

The TWDB appreciated the suggestions and comments. The TWDB suggests that these groups and individuals contact their regional water planning group since it is at the regional water planning group level where decisions about specific strategies to meet water supply needs are made. No changes to the rules were made in response to these comments.

Comment

Texas Drought Project commented that grants, not loans, should be made available to political subdivisions to repair leaking pipes.

Response

The TWDB only has authority granted to it by the Texas Legislature. The Legislature was very clear in HB 4, Sec. 2.01 that the TWDB was not to make any grants using funds from the SWIFT and SWIRFT program. The board does have other programs in which some grant funds are available for rehabilitation of leaking pipes. No changes in the rule were made as a result of this comment.

Comment

Texas Citrus Mutual commented that the Rio Grande Valley (RGV) has not made much use of the TWDB's existing agricultural loan program and that "nothing in the SWIFT program" changes that situation. Texas Citrus Mutual further commented that this is the result of some basic water conservation issues unique to the Valley, including a lack of incentives for farmers to conserve irrigation water and improve the irrigation distribution and delivery system and a lack of incentives for large farmers to achieve on-farm water savings with newer technology.

Response The board appreciates these comments, but disagrees that HB4 funding would not be beneficial for the RGV. The board intends to fund agricultural water conservation projects through a very aggressive marketing and outreach program and will continue to work with regional water planning groups, including those in the RGV, to make use of that funding. The board agrees that partnerships between cities and irrigation districts would be worthwhile. No changes were made to the proposed rule in response to these comments.

§363.51 and §363.731

Comment

TxWIN commented that the language in §363.51 and 363.731 related to "sound construction principles" should be deleted, asserting that such language is extraneous, unnecessary, and vague. In addition TxWIN commented that the language may not be legally enforceable.

Response

The board has deleted the requirement from the rules which includes §363.51, 363.731 and a similar provision in §363.953. The board notes that plans and specifications submitted to the TWDB under Texas Water Code §17.183(b) must include a seal by a licensed engineer affirming that the plans and specification are consistent with and conform to current industry design and construction standards, (emphasis added). And also under Texas Water Code §17.183(a)(2)(A), the contractor must furnish performance and payment bonds that guarantee that the contract will be completed and performed according to approved plans and specifications and in accordance with sound construction principles and practices, (emphasis added).

§363.1302(1) - Definition of agricultural water conservation

Comment

Sierra Club and TPWD commented that they support the proposed definition of "agricultural water conservation." Sierra Club did suggest that the rules should require an analysis from an applicant for a brush control project that would allow the TWDB to fully evaluate whether the brush control project will actually produce water, the quantified amount of conserved water, whether the water made available can be used on a sustainable basis, and the cost-benefit of the project.

Response

The board appreciates the comments in support of the proposed definition. The board is not convinced that it needs an extensive analysis from an applicant for the board to determine that the brush control project would be located, "in areas of the state where those activities in the board's judgment would be most effective." Any brush control project funded by SWIFT/SWIRFT, as any other project, must be in the state water plan to qualify. The board has not made any changes to the rule in response to this comment.

§363.1302(2) - Definition of agricultural irrigation project

Comment

NWF, Nature Conservancy, and Sierra Club all had concerns with how the definition of an agricultural irrigation project would work together with the reporting and set-aside requirements of §363.1311. NWF had no objections to the proposed broad definition of agricultural irrigation projects. However, NWF believes that only those agricultural irrigation projects that are designed for water conservation or reuse count toward meeting the 20% requirement. NWF thought that the issue could be resolved with modifications to §363.1311. If those changes were not made, then a change to the definition would be in order. Sierra Club and Nature Conservancy commented that the purchase and installation of new water sources or new irrigation systems should not be considered to count toward the 20% conservation or reuse "set-aside".

Response

The board understands the legislative intent was that agricultural irrigation projects designed for water conservation or reuse qualify to support the 20% requirement of Texas Water Code §15.434(b). The board has made a change to §363.1311 to clarify this point. The board notes that the purchase and installation of new water sources and new irrigation systems are included in the definition of agricultural irrigation projects. Agricultural irrigation projects can only count toward the 20% requirement if they have been designed for water conservation or reuse. Accordingly, no change in the rule has been made to the definition of an agricultural irrigation project.

§363.1302(9) - Definition of facility

Comment

The Comptroller commented that facility is defined as a regional facility and questioned whether this would require all facilities under consideration by the rule to be regional facilities. The Comptroller suggested removing "regional" from the definition and inserting "regional" in the rule where appropriate.

Response

With one exception, "facility" is only used in the rule in connection with state participation funding. State participation funding is only available for regional projects. Therefore, the board declines to make the suggested change. The proposed rule did use "facility" in §363.1305 in relation to the length of the loan. That use of the term is not intended to be exclusively for regional projects, so that section has been revised to cover any project financed by SWIRFT funds.

§363.1302(14) - Definition of Reuse

Comment

TPWD commented that they support the definition of reuse.

Response

The board appreciates the comment. No changes were made in response to the comment.

Comment

NWF and Sierra Club commented that the definition for reuse is too broad. NWF suggested limiting the concept of reuse by inserting the word "beneficial" before the first "use" in the definition.

NWF and Sierra Club further commented that reuse should be defined to exclude storage reservoirs and aquifer storage and recovery (ASR) projects from the definition of reuse. Coastal Bend Sierra Club commented that ASR projects should not be included in the reuse definition. NWF and Sierra Club believe that it is inappropriate to allow large infrastructure components that are not unique to conservation to fit within the 20% "set-aside".

Response

The board agrees that the water being reused must be beneficially used for the second time to be considered a reuse project as intended by the Legislature. Accordingly, the rule has been changed to add the word "beneficial."

No two water infrastructure projects are exactly the same. Projects differ in important aspects, including system losses while water is in storage. For this reason, the board does not wish to make categorical pronouncements of which categories of particular technologies will or will not be considered water conservation or reuse. The board will make these decisions on a case-by-case basis. Any projects considered as water conservation or reuse will be so identified on the board's SWIFT projects web page.

§363.1302(15) - Definition of rural political subdivision

Comment

Sierra Club and TRWA support the definition of a rural political subdivision in the proposed rules and agree that the use of the

most current data from the U.S. Bureau of the Census or board-approved population projections is appropriate.

Response

The board appreciates the comment. No changes were made to the rule in response to these comments.

Comment

Region M commented that the definition of "rural entity" seems to include those that are not water user groups in the current water planning process and wanted clarification that municipalities with fewer than 500 people are included in this definition.

Response

The board notes that there is no definition of "rural entity" in the rule. Rural political subdivision is defined in order to implement the 10% requirement of Texas Water Code §15.434(b) for projects going to rural political subdivisions. Water user group is a concept for planning that groups similar entities together. Project financing under SWIFT/SWIRFT is made to political subdivisions and nonprofit water supply corporations. Therefore there is no direct correspondence between water users groups and applicants for project funding. The definition of a rural political subdivision in the rules includes municipalities with fewer than 500 people, using the most current available data from the U.S. Bureau of the Census, or other board-approved population projection figure. No changes to the proposed rules were made in response to this comment.

Comment

Brady commented that the definitions of "rural" and "urban" need to be distinct from one another. Many Texas rural communities are far removed from both major cities and urban areas. Rural communities are generally economically independent of neighboring large cities. Interconnections to regional infrastructure systems are generally non-existent.

Response

The Legislature defined the term "rural political subdivision" for purposes of the SWIFT/SWIRFT program by reference to the definition in Texas Water Code §15.992, and the board chose to define "rural population" consistent with this legislative direction. No changes have been made in response to this comment.

§363.1302(18) - Definition of water conservation

Comment

The State Water Implementation Fund for Texas Advisory Committee, Representative Lon Burnam, LCRA, NWF, Nature Conservancy, Population Media Center, Region H, Sierra Club, Water Smart Software, and 1,542 individuals commented that the definition of "water conservation" should not include the concept of "reuse." The Advisory Committee stated that separating the two concepts would assure the public that the board does not intend to meet its obligations under Texas Water Code §15.434(b) in ways that might be confusing to the public or deviate from the intent of HB 4 to support both water conservation and reuse. Representative Lon Burnam pointed out that HB 4 uses water conservation and reuse as two separate concepts.

TPWD supported the proposed definition of water conservation. ACEC, Houston, NFBWA, SJRA, U.S. Capital Advisors, and WHCRWA supported the proposed definition of water conservation that included the concept of reuse.

Response

After review of HB 4, the board is of the opinion that the Legislature used the terms water conservation and reuse as two separate concepts with the intent to draw a clear distinction between these two concepts. Therefore, the rule has been revised to separate reuse and recycling from the definition of water conservation for the purpose of this program. Similarly, the definition of agricultural water conservation includes the concept of reuse. Therefore, the words "or reuse" have been deleted from the definition of agricultural water conservation as well. This change of definition for agricultural water conservation will not disqualify any otherwise eligible project from SWIFT/SWIRFT financial assistance. At most, it may change a category in which a project fits. A definition of reuse is included in the final rule.

Comment

Representative Lon Burnam, League of Independent Voters of Texas, Region H, TAB, and 1,541 individuals commented that addressing water loss by repairing or replacing aging and leaking pipelines are worthwhile projects and falls within the definition of water conservation.

Response

The board agrees that repairing or replacing aging and leaking pipes falls within the definition of water conservation in that it would be a practice or technique that reduces the loss or waste of water and that such projects are worthy of financing and implementation. To the extent that such projects may not be included in the state water plan, the board has other financing programs to cover these projects.

Comment

Representative Lon Burnam, NWF, Sierra Club, and four individuals commented that aquifer storage and recovery (ASR) projects should not count as water conservation projects or at least should not count toward the satisfaction of the statutory duty to apply 20% of funding toward water conservation or reuse.

Response

No two water infrastructure projects are exactly the same. Projects differ in important aspects, including system losses while water is in storage. For this reason, the board does not wish to make categorical pronouncements of which categories of particular technologies will or will not be considered water conservation or reuse. The board will make these decisions on a case-by-case basis. Any projects considered as water conservation or reuse will be so identified on the board's SWIFT projects web page.

Comment

Clean Water Action commented that they appreciated that the definition of water conservation was based on the state's best management practices guide and that the rules award points to applicants who have already achieved considerable water use savings and water loss reductions.

Response

The board appreciates the comment. No changes have been made to the rule as a result of this comment.

§363.1302(19) - Definition of water plan project

Comment

Abilene, HCPUA, LCRA, NTMWD, TRWD, and TWCA submitted comments related to the definition of "water plan project" in

proposed 31 TAC §363.1302(19). HCPUA commented that they support the proposed definition as written. In their view, if the definition were expanded to include alternative strategies, it would undermine the regional planning process. NTMWD and Abilene commented that the board should consider amending the proposed definition of "water plan project" in 31 TAC §363.1302(19) to clarify that water plan projects eligible for SWIFT funding include projects contained in a regional water plan pursuant to an amendment of that plan, as contemplated in 31 TAC §357.51. They believe this would eliminate confusion as to what qualifies as a "water plan project" and would allow applicants more flexibility in defining and refining their strategies in a timely manner. LCRA and TWCA commented that the board should consider amending the proposed definition of "water plan project" to include alternative water strategies in a regional water plan as they are "fully evaluated" and, per the TWDB's processes, may be substituted into a regional water plan if a recommended management strategy is no longer recommended.

Response

In keeping with the "bottom-up" nature of water planning in Texas the board is of the opinion that the regional water planning groups should have the decision on whether or not a water management strategy that they did not include as a recommended strategy should be included as a project eligible for SWIFT/SWIRFT funding. 31 TAC §357.51 provides the TWDB process by which regional water planning groups may amend adopted regional water plans. A regional water plan may be amended through either a minor or major amendment or through substitution of an alternative water strategy. This process is in place in order to effectively develop the state water plan in a manner that does not, for example, over-allocate water sources and avoids interregional conflicts. The TWDB is required pursuant to 31 TAC §357.51(f) to approve "necessary" amendments, including substitutions of alternative water strategies, to the state's water plan. A "necessary" amendment is an amendment to an adopted regional water plan approved by a regional water planning group in accordance with the provisions outlined in 31 TAC §357.51.

"Water plan project" has been defined in a manner consistent with its use in the state water plan and common usage amongst water professionals. Further, Texas Water Code §15.432 explicitly states the Legislature's intent in creating the SWIFT fund, stating that financial assistance from "the fund will never be used for a purpose other than the support of projects in the state water plan." Because the TWDB currently provides a mechanism by which amendments to, and alternative water strategies in, regional water plans adopted by regional water planning groups can become part of the state water plan, it is not necessary to amend the definition of "water plan project" as suggested by the commenters. No changes to the proposed rule were made in response to this comment.

§363.1303 - Prioritization System

Comment

The Comptroller commented that in §363.1303(c) the board reserves the right to limit funding available to an individual entity. The Comptroller suggests that last sentence of that subsection should be changed to: "The board reserves the right to limit the amount of funding available to an individual entity or project." This suggested change could provide the board additional flexibility if multiple entities agree to split the costs of financing a regional project.

Response

If multiple entities agree to split the financing cost of a regional project, the board believes that the existing language in the rule would give the board the ability to limit funding of each individual entity participating in the project. Therefore, a change is not necessary to give the board additional flexibility. No changes have been made to the rule as a result of the comment.

Comment

TCC commented that the board should have the ability to revisit a project's particular scoring under the prioritization rules. Over time there will be changes in circumstances that could result in changes in the points awarded under the prioritization process, such as increased local contribution, obtaining environmental permits, or other circumstances. The TCC believes the board should have the flexibility to take new conditions into account.

Response

The board wants to clarify that, in accordance with the statute, the board will only be prioritizing those projects that elect to submit an abridged application to the board for financial assistance, see Texas Water Code §15.437(b). The board intends to prioritize these projects, ask for full financial applications, and make funding commitments, all within a matter of months. There will not be that much time for conditions to change. If an applicant receives a low score and does not obtain a commitment, the applicant is free to seek financing again in the next round of board funding. The project will be rescored in the next round of funding based on current conditions. No change has been made in response to this comment.

§363.1304 - Prioritization Criteria

Comment

Region H, Texas Farm Bureau, and TRWA commented that the prioritization criteria appear to appropriately balance the multitude of competing prioritization factors. TRWA supports the prioritization provisions. TRWA commented that they appreciate the renewed emphasis that the board is placing on meeting the needs of rural Texas.

Response

The board appreciates the comments. No changes were made as a result of these comments.

Comment

Abilene, Austin, H_2O4Texas, NHCRWA, NTMWD, TAB, TCC, TRWD, and TWCA commented that the rules need to be changed so that the prioritization system clearly deals with the situation where a project in the state water plan is dependent on or directly related to other projects within the plan. For example, a pipeline project may be listed and ranked as a separate project in a plan, yet it is only useful if one or more water supply projects in the plan are implemented to generate the water supply to be conveyed in the pipeline. These organizations commented that the board should allow the prioritization of projects to be linked to other projects that depend on that first project. TRWD and TWCA suggested that the board should consider awarding point scores to projects equal to the highest point score that any other related or dependent project receives. NTMWD, TRWD, and TWCA commented that local contribution toward any of the related or dependent projects should count the same as if the contributions were directly made to the project for which funding is sought.

Response

Larger projects on which other projects depend may already receive higher point scores as a result of the higher total population and volume of water needs of the end users served by these projects. The board feels that scoring projects based on the more easily measured end beneficiaries of each project will make for more consistent, repeatable, and fair scoring than trying to establish scores based on less clear relationships to other projects. The uniform standards developed by the HB 4 stakeholder committee for the purpose of prioritizing projects at the regional level may offer an avenue to address the concern of the commenters. Therefore, the board declines to make the requested change.

Comment

Region M commented that specific water user groups served by a project should be scored based on how the project is described in its application rather than what is listed in the state water plan. It also commented that because of the longer-term planning cycle as compared to the shorter-term funding cycles, it is important for changes in regional projects to be scored according to their most-up-to-date agreements and configurations.

Response

The SWIFT and SWIRFT programs are solely for the purpose of supporting projects in the state water plan; therefore, objective scoring of a water plan project must take into consideration relevant information contained in the state water plan, for example, with respect to points awarded based on state water plan needs that would be met by the proposed project. Many elements of the prioritization scoring will be based on the submitted funding application that may contain updated information about the project and participating entities including, for example, criteria scoring under §363.1304(2) - (4). No changes to the rule were made in response to this comment.

§363.1304(1)

Comment

LCRA commented that further clarification is needed on the first four criteria of subsections (2) through (5). LCRA commented that they understood that the intent was to have a maximum score of 50 points for the first four criteria. LCRA pointed out that several of the maximum points for the subsections could be combined to have a point total in excess of 50 points.

Response

The 50 points is intended to function as a cap on the sum of the individual scores for the first four items. For a particular application, the applicant gets the lesser of the sum of the individual first four items or 50 points. For example, if the sum of the first four items for a particular application was 65, then the applicant would be scored as a total of 50 points for those four items. The rule has been reworded to clarify this intent.

Comment

SJRA commented that the board should remove the cap of 50 points for the first four criteria or raise the maximum number of points for the first four criteria. SJRA raised the possibility that because of the tie-breaker provisions of §363.1304(13), a project that scored 75 points could end up receiving the third highest priority among two other projects that received 52 points each.

Response

As explained elsewhere in the preamble, the cap of 50 points for the first four priority criteria is an attempt to increase the ability of rural projects to achieve enough points to receive financial support and assist the board in fulfilling its statutory duty to undertake to apply not less than 10% for funding to support projects for rural political subdivisions and agricultural water conservation projects. Texas Water Code §15.434(b)(1). The board did not receive alternatives to the 50 point cap that would give the board some assurance that rural projects will receive sufficient points in the project prioritization system. The board declines to make any changes to the rule in response to this comment.

§363.1304(2) - Serve a Large Population

Comment

The Comptroller commented that a literal or strict reading of §363.1304(2) could allow a city with a large population to accrue all of the points for each subdivision, i.e., a city of 2 million would receive points for having at least 10,000 population, plus points for having at least 250,000 population, etc. The Comptroller notes that similar issues appears in §363.1304(7) and (12).

Response

The board agrees that the intent of the section could be misunderstood. Therefore, the board has revised the final rule to clarify the intent in such a way that a city would receive points under one subsection only. Similar revisions have also been made to §363.1304(7) and (12).

Comment

Austin, Brushy Creek, GTUA suggested that the board reconsider the range of population categories. GTUA and Brushy Creek's specific concern was that the 10,000 to 250,000 population range includes a large number of cities. For some areas of the state, applicants will not be able to put a regional project together that has more than 250,000 population. Brushy Creek suggested further discretization of the population levels, with a scale that increases in magnitude until the 1 million mark is reached. For example, 6 points for 10,000; 12 points for 100,000; 18 points for 250,000; etc. Austin's specific concern was that the top tier should include a lower population so that more large urban areas would get high points.

Response

The board is implementing a requirement of the statute to give the highest consideration to projects that will serve a large population. The board had initially thought to have a much higher threshold before an applicant could get any points under this category. The board recognizes that those projects from moderate-sized population areas are significant projects, so the board proposed its rule that would give at least some points to moderated-sized cities. However, to take points from the truly large population centers and redistribute those points to smaller population applicants seems to the board to run counter to the legislative intent of the provision in the statute to prioritize projects that will serve large populations. Similarly, lowering the population limit for the top tier of cities would dilute the value of the points for the very largest populations. The board has not made any changes to the rule in response to this comment.

Comment

Sierra Club commented that the criteria needed clarification. Sierra Club questioned the meaning of the phrase "in conjunction with" and asked how it would be determined.

Response

The board agrees that the intent of the section could be misunderstood. Therefore, the board has revised the final rule to clarify the intent in such a way as to make clear that any related projects must be directly relying on the same water volumes.

§363.1304(3)(A) - Serves a Diverse Urban and Rural Population

Comment

Corpus Christi, H_2O4Texas, and TAB commented that §363.1304(3)(A) could unintentionally penalize a project that serves an urban population and multiple rural populations, which appears inconsistent with §363.1304(3)(B). H_2O4Texas asks for clarification of the rule. Corpus Christi commented that, strictly interpreted, a city that serves one urban population and multiple rural populations could not get 10 points. Corpus Christi suggested that if the board would add "or more" between "one" and "rural," then they could get 40 points.

Response

A project that only serves an urban or only serves a rural population would get zero points for serving a diverse urban and rural population, §363.1304(3)(C). A project that serves one or multiple urban populations and only serves one additional rural population would get 10 points under this factor, §363.1304(3)(A). A project that serves multiple urban populations and serves two rural populations would get 10 points for serving the first rural population, §363.1304(3)(A), and would get 4 additional points for serving the second rural population, §363.1304(3)(B). A project that serves multiple urban populations and three rural populations would get 10 points for serving the first rural population, 4 points for serving the second rural population, and 4 points for serving the third rural population. The points that an applicant can get under this criteria are capped at 30 points. If the board were to adopt the suggested language for subsection (3)(A) of serving one or more rural populations, strictly interpreted, this would make subsection (3)(B) irrelevant. The applicant would get only 10 points for serving all the rural areas, and there would be no additional rural areas for which additional points could be awarded. The board has made no changes to the rule in response to this comment.

Comment

Abilene commented that points awarded for serving a diverse urban and rural population should be based on the percentage of the project intended to serve rural participants. This would score a project that was going to serve a high percentage of rural residents higher than a mostly urban project that was also going to serve a small percentage of rural residents.

Response

The rule achieves roughly the same results, but without potentially penalizing larger urban entities that by their nature might have difficulty incorporating a high percentage of rural participants relative to their projects. The more rural populations served by the urban area, the more points the project will receive, up to the cap of 30 points. No changes have been made in the rule as a result of this comment.

§363.1304(4) - Regionalization

Comment

Upper Trinity Regional Water District commented that they support giving priority to funding regional water supply projects that serve multiple jurisdictions. Upper Trinity is concerned that a utility that is part of a regional system or strategy should not lose access to the rural funds, and rural political subdivisions should be given more points if they can join a regional strategy to address their needs.

Response

The board appreciates the comment. Under the rule, regional projects will get points under the §363.1304(4) regionalization criteria. In addition, any regional projects that also serve a diverse urban and rural population will also get points under the §363.1304(3) criteria of serving a diverse urban and rural population. Regional projects will not lose access to "rural" funds under the rule. The board has not made any changes to the rule as a result of this comment.

Comment

Region M commented that the regionalization criteria assign points for serving political subdivisions other than the applicant but does not recognize systems that serve additional users that are not political subdivisions, (e.g. irrigation, livestock, steam-electric power generation, manufacturing, or county-other). Region M further commented that to better prioritize diverse urban and rural area projects, the regionalization criteria could be weighted more heavily or the definition of rural could be revised or determined by the regional water planning groups.

Response

If the board's regionalization definition included every project from a political subdivision that would serve additional non-political subdivision users, even generally understood non-regionalization projects could potentially get points under this category. This is not the intent as the board understands it of the regionalization criteria. However, a project that connects existing systems, even those that fall into the "county-other" category, would be considered a regionalization project. The board defined "rural population" consistent with "rural political subdivision," as that term was defined by the Legislature. The board made no changes to the rule as a result of this comment.

Comment

NHA commented that the project selection process should include consideration of those projects that provide regionalization and those that serve both urban and rural populations.

Response

The board appreciated the comment. The board believes that the rule accomplishes this result. No changes in the rule have been made as a result of this comment. §363.1304(5) - High Percentage of Water Supply Needs

Comment

LCRA and NTMWD commented that some points (more than zero) should be awarded to applicants where a significant percentage of that applicant's water supply need is met. NTMWD commented that 20% could be a significant percentage. LCRA commented that 25% or higher could be a significant percentage. NTMWD commented that the proposed rule weighs against rapidly growing metropolitan areas, as no single project will meet a majority of such an applicant's water supply needs.

Response

The statute calls for the board to give the highest consideration in awarding points to projects that will have a substantial effect,

including projects that will, "meet a high percentage of the water supply needs of the water users to be served by the project." Texas Water Code §15.437(c)(4). While the board concedes that a project that meets 20% or 25% of the water supply needs of the water users can be a significant project, the board does not believe that 25% would fall into the category of a "high percentage." Therefore, the board declines to change the rule as a result of this comment.

Comment

LCRA commented that assigning some points for the longer term needs, i.e., needs that will be met by the project in later decades than the first decade the project becomes operational, may be appropriate.

Response

The criteria are part of the board's attempt to balance urban versus rural interests and increase the ability of rural projects to achieve enough points to receive financial support and assist the board in fulfilling its statutory duty to undertake to apply not less than 10% for funding to support projects for rural political subdivisions and agricultural water conservation projects. Texas Water Code §15.434(b)(1). The board did not receive alternative suggestions that would give the board some assurance that rural projects will receive sufficient points in the project prioritization system. The board declines to make any changes to the rule in response to this comment.

Comment

Region M commented that projects that serve users in the county-other category should include the needs of the whole county-other grouping in this calculation. Further, if the project serves non-municipal water user groups, the county-wide groupings of needs should not be used to calculate the percentage of needs met by a project. Finally, Region M commented that the proposed criteria penalize entities who are developing multiple sources or systems in order to be more resilient in the face of supply shortages.

Response

The proposed criteria were required by the Legislature to be included in the scoring system and to receive the highest consideration in awarding points. Similarly, the Legislature stated that the points would go to projects that meet, "a high percentage of the water supply needs of the water users to be served by the project." The board will base the calculation on needs in the state water plan, and it is not free to include or exclude other users from the calculation. No changes were made in response to this comment.

§363.1304(6) - Additional Points

Comment

Environment Texas, NWF and Sierra Club commented that there appeared to be a typographical error in this section in that a project could also receive additional points under criteria in subsections 11 and 12. Environment Texas suggested that potentially subsection 13 should be included.

Response

The board appreciates this comment. The rule has been changed to reflect that a project can receive additional points under the criteria in subsection 7 through 12. Subsection 13 was not included since that subsection is technically not a criterion for awarding points. It is meant as a tie breaker for project ranking in the event that two or more projects receive the same number of points, and not all of those projects can be funded through the same round of financing. Changes to the rule as described in this response were made.

§363.1304(7) - Local Contribution and Leveraging of Funds

Comment

The Comptroller commented that an applicant that had used local monies to fund part of its project might be concerned that it would receive the same consideration as an applicant that was funding part of its project with federal funds. The Comptroller suggested that the rules provide similar points for the criteria of Texas Water Code §15.437(d)(1) and (d)(3). This would actually favor the applicant using local funds since that applicant would get points both for the criteria under subsection (d)(1) for the local contribution and under (d)(3) for leveraging those local funds.

Response

Increasing the total points either by adding points to a criterion or by splitting a criterion in the rules and giving them the same number of points as the single proposed criterion, unless a similar number of points are reduced somewhere else, has the effect of reducing the weight of all the other criteria. The board was unable to find a category that it felt should have a reduced weight. The board also did not want to create a disincentive for political subdivisions to seek federal or other non-TWDB funds for all or part of the costs of their water infrastructure projects. The board has not made any changes in response to the comment.

Comment

H_2O4Texas, TAB, TWCA, TRWD, and others commented that the allocation of points for local contribution should be on a scale larger than 1 to 5. This would allow a better differentiation between projects that provided 10% funding versus a project that provided 50% funding. A point scale similar to the point scale for water conservation would be appropriate.

Response

The board recognizes the importance of local contributions to a project and leveraging of federal funds for a project; however, if the rule were to increase the total points for this category, there would be a corresponding decrease in the percentage contribution of other categories to the overall point total. The board notes that the proposed rule provides five different gradations of points to differentiate between providing 10% funding versus providing 50% funding. This is similar to the point scale for municipal water conservation where there are five different levels of points for gallons per capita per day reductions of 2 to 18 % or more. The difference between the proposed scale for financial contribution and water conservation is that for water conservation each movement up on the scale results in two points rather than 1 point. The board was unable to find other categories or factors where the board wished to reduce the relative contribution of that category. The board has made no changes to the rule in response to this comment.

Comment

TWCA encouraged the board to count local contributions of related or dependent projects as if the contribution was made directly to the project for which funding is being sought.

Response

The board recognizes that many state water plan projects are interrelated. However, the board believes that it is appropriate to

consider only the local contribution to the project, since projects are typically recommended and prioritized as distinct water management strategies by the regional water planning groups. Also, at some level, all local projects are related, so it becomes difficult to draw the line. By having only the local contribution of each project count toward only that project, the board has a bright line with which to deal. No changes to the proposed rule were made in response to this comment.

§363.1304(8) - Financial Capability

Comment

LCRA, H_2O4Texas, NTMWD, SJRA, TAB, TRWD, and TWCA commented that the board should consider additional factors for determining financial capacity of the applicant other than, or in addition to, the household cost factor, stating that the calculation proposed would be elusive to projects that serve agriculture or industry. They offer tailoring the scoring criteria to the type of applicant.

Response

In determining the financial capacity of an applicant, the board examines who the ultimate end user of the proposed project would be, as any costs for the project are ultimately on customers or a population whom the applicant serves. In the majority of projects, the end user is a household. In keeping with that basis, the maximum two points a project could receive will be based on what the estimated financial impact will be on the average household in the project area. No changes to the proposed rule were made in response to this comment.

Comment

NTMWD commented that the board should consider other indicators that may demonstrate the applicant's ability to repay. The District proposes the use of the applicant's bond rating as well as overall financial health to determine the ability to repay the SWIFT loans.

Response

The use of bond ratings as factors to determine applicant's ability to repay would place non-rated smaller, rural entities at a disadvantage. No change has been made in response to this comment.

Comment

TCC commented that the board should ensure all applicants are credit worthy and have the ability to repay.

Response

In addition to the financial capability criteria in the prioritization process, all selected applicants seeking financial assistance from SWIFT/SWIRFT will have to satisfy the board's traditional tests for credit worthiness and ability to repay the loan. The board's credit review includes assessing the applicant's financial and managerial capabilities as well as a review of the community's demographics. The board must make a finding that the entity has the financial ability to repay the debt. The financial capability criterion in the prioritization process is for the purpose of ranking submitted applications only. No changes to the proposed rule were made in response to this comment.

Comment

Region M commented that the cost factor should be balanced by criteria on what other strategies are available to the entity. An entity should not be penalized for a costly strategy when that is the only strategy to meet an immediate need.

Response

The board intends to calculate the household cost factor based on current rates and current debt service. Costs of the proposed project will have no effect on this prioritization criterion. The board has made not changes as a result of this comment.

§363.1304(9) - Emergency Need

Comment

The Comptroller noted that the proposed rule provided a maximum of four points for emergency projects. The Comptroller asked if the point system provided enough discretion for the board to address water planning projects that may face an emergency situation that arises quickly.

Response

The SWIRFT/SWIFT financial assistance is only available for projects that are included in the state water plan, in accordance with Texas Water Code §15.472. The state water plan recommends water management strategies for meeting the long-term water needs of Texas. The board's experience with funding emergency water projects is that the best option for financing emergency water projects will be other board financial programs and programs offered by other agencies. For those remaining cases where the water management strategy in the state water plan is the best technical option to meet an emergency need, the board believes that it does have enough discretion to address those financial needs. The board has made no changes in response to this comment.

Comment

Austin commented that the emergency need conditions as laid out in the proposed rules do not specifically reference drought conditions and recommended adding a drought condition factor since the 2017 State Water Plan will have a chapter on drought.

Response

As required by statute, the rule contains the awarding of points if the applicant is included on the Texas Commission on Environmental Quality's list of public water systems that have a water supply that will last less than 180 days without additional rainfall. In the board's experience, most public water systems are on the list because of issues associated with the drought. The board declines to add additional drought criteria. No changes were made in response to this comment.

Comment

NWF and Sierra Club commented that subparagraph (9)(B) should be deleted so that only true emergencies would be addressed. NWF points out that any advancement in the decade of need, even from the fourth decade to the third decade would be characterized and prioritized as an emergency. Sierra Club questioned whether a project in the distant future was an emergency just because it is needed a decade earlier, for example, the decade of need changing from 2060 to 2050.

Response

The board disagrees with the comment. Water planning is carried out on a five-year cycle. If during this cycle, it becomes clear that a project is needed a decade sooner, that is generally because of sudden and unforeseen change in circumstances, not a gradual increasing of need that was unanticipated. Because

the process necessary to secure permits for large water supply projects may take a long time, it is sometimes necessary to begin development on a project that will not serve a need for over 10 years. As a result, it is just not projects that move from the second decade of need to the first decade of need that may unexpectedly need to start development immediately. Since the SWIFT/SWIRFT financing is a loan, the board's experience is that the risk that a political subdivision will come in to borrow money before it is necessary is likely low. The board has declined to make any changes in response to this comment.

Comment

Brushy Creek commented that all projects that are recommended for implementation in the first decade of need should get one point for emergency need.

Response

The board believes that many projects recommended in the first planning decade do not address an emergency need, for a number of reasons. For instance, projects that are needed in the first decade may either have simple permit requirements or the project owner has already started the permitting process, and therefore those projects cannot be considered emergencies. Further the board does not want to create an incentive for owners to wait to start their projects in order to receive emergency points. The board has not made any changes to the rule as a result of the comment.

Comment

One individual commented that there were not enough points allocated to emergency need.

Response

The board was unable to find a category of points that it felt it could reduce in order to give this category more points. The board has not made any change to the rule as a result of this comment.

§363.1304(10) - Ready to Proceed

Comment

The Comptroller noted that the proposed rule provided points for projects that are ready to proceed within 18 months. The Comptroller questioned whether providing additional points for shorter periods of time, such as 6 months or 12 months, would provide additional incentive for faster construction of these water projects.

Response

The board acknowledges that selecting any timeframe to serve as a yardstick for "ready to proceed" is uncertain and requires a high level of professional judgment. Often, there are permits to be obtained, designs to be completed, or other tasks before a project is ready, making six months unrealistic. Non-pre-design funding option applicants have to prepare design documents during the time from funding to construction, adding to the reasonable length of time to construct. The board does not want to create an incentive for applicants to wait too long to bring an application in for funding. In addition, SWIRFT is a loan program. This provides a built-in incentive for political subdivisions to only apply for financial assistance when they are close to their actual need to use the funds. The board declined to make any changes to the rule.

Comment

H_2O4Texas, TAB, TRWD, and TWCA commented that applicants who had obtained a water right should get more than one point for this activity. Water rights are difficult to obtain. Having the necessary water right is a major obstacle that has been overcome and makes that project closer to construction. TRWD and TWCA suggested that three to five points would be appropriate. TAB would have the board award additional points for obtaining other required permits as well.

Response

The board understands that acquiring a water right can be difficult. The difficulty for the board is in finding categories in the proposed rule where the board thinks it appropriate for that category to receive less weight in project scoring. The board has reexamined this category for projects that are ready to proceed and notes that the proposed rule would award one point for projects where the applicant has secured funding for the project from other sources, §363.1304(10)(D). This point is a duplication of the points awarded in the local contribution or leveraging federal funds category, §363.1304(7). Therefore, in the final rule the board has eliminated the point for having secured funding from another source and increased the points for obtaining a water right to two. The board declines to award additional points for obtaining other permits, as the statute declined to require the board to award points for applicants who had obtained other permits. It is difficult to equitably award points to different projects for obtaining required permits when the types of permits and the difficulty in obtaining them varies widely from project to project. The board made changes to the rule as specifically set forth in this response.

Comment

TxWIN commented that the TWDB should further define the types of information necessary that constitutes "readiness to proceed." It suggested the TWDB consider the criteria set forth in 31 TAC §363.1307(d)(1) as laid out in the pre-design funding option. TxWIN also commented that additional prioritization points should be awarded for projects that have completed or substantially completed design and that these projects should also be given higher priority in the evaluation process.

Response

The board notes that the tasks set out in §363.1307(d)(1), such as description of the project, area maps, project budget, and schedule, are tasks that are typically included in preliminary engineering. While there are virtues to more specificity, the board is concerned that given the broad nature of projects that are eligible for SWIRFT funding, from new water supplies to reuse and water conservation projects, all of those tasks might not be applicable to all types of projects. At this point the board wants to maintain flexibility by the use of the general term "preliminary engineering." While the board considers an applicant's "readiness to proceed" to be important, the prioritization system is a balancing act in which other criteria are equally, and some more, important. The board could not find a category in which it wanted to reduce the number of points to transfer to projects with completed designs. No changes were made in response to this comment.

§363.1304(11) - Water Conservation

Comment

1,535 individuals commended the TWDB for the proposed prioritization weight to be given projects from applicants who have already demonstrated water conservation or whose projects will

achieve water conservation. The Nature Conservancy thought the proposed rule was a good way to reward past performance in water conservation and to incentivize future performance.

Response

The board appreciates these comments. No changes were made in response to this comment.

Comment

Representative Lon Burnam, Coastal Bend Sierra Club, League of Independent Voters of Texas, Sierra Club, NWF, Nature Conservancy, Population Media Center, and 8,824 individuals commented that water conservation should be the first priority for funding in each funding cycle. As many individuals pointed out, the water conservation projects would still have to meet other project eligibility criteria.

Response

HB 4 requires the TWDB to establish a point system for prioritizing projects that come to the board for financial assistance from the SWIRFT. The statute requires the board to give the highest consideration to four factors: projects that will serve a large population; projects that provide assistance to a diverse urban and rural population; projects that provide regionalization; and projects that will meet a high percentage of the water supply needs of the water users served by the project. The statute goes on to provide for the board's consideration of other factors in its prioritization system, including the demonstrated or projected effect of the project on water conservation. The statute did not include water conservation as one of the factors that should be given the highest consideration by the board. The rule adopted today, does give water conservation the most points (along with the priority given by the regional water planning group) among all those factors listed by the statute as deserving consideration by the board, but not in the group required to receive the highest consideration. The board has not made any changes in response to this comment.

Comment

Region M commented that agricultural water conservation projects should be weighed much more heavily. Region M pointed out that many of the other categories are not available to agricultural water conservation projects to receive points. Yet, agricultural water use accounts for a significant portion of the state's water use.

Response

The board notes that if an agricultural water conservation project to improve efficiency results in conserved water available for municipal use, then other categories for ranking projects would become available. The project will be evaluated by the board for prioritization looking at the whole of the project and will, therefore, have to be evaluated on a case-by-case basis. The board acknowledges that with the statutory criteria for prioritization, many agricultural water conservation projects might not score as high as typical municipal projects. However, the board does believe that appropriate water conservation projects will be able to be funded with the prioritization system adopted here. The board intends to apply funding to the percentages for agricultural projects through a very aggressive marketing and outreach program. The board has not made any changes to the rule in response to this comment.

Comment

Region M, Rio Grande Regional Water Authority and one individual provided comments expressing concern for how agricultural water conservation projects will fare in the prioritization process. Region M commented about projects that serve both agricultural and municipal water user groups. Region M commented that points in 31 TAC §363.1304(11)(A) and (11)(B) should apply to both groups. Region M and Rio Grande Regional Water Authority further commented that other categories of prioritization are not available to agricultural conservation projects despite the fact that agricultural use accounts for a significant portion of the state's water. They point out that it will be difficult to compare agricultural water conservation projects to other projects in the prioritization process. Region M comments that this is because there is no capacity to pay in agricultural conservation projects. It recommends that this criterion should be weighted more heavily.

Response

While certain categories of prioritization are not available to agricultural conservation projects because, for example, there may not be a municipal user population to serve, the TWDB is directed in Texas Water Code §15.434(b) to apply "not less than" 10% of projects for agricultural water conservation. This percentage is intended to be a floor and not a ceiling on the amount the board could disburse. The board is convinced that it will be able to fund eligible agricultural water conservation projects. Simultaneous with the adoption of this rule, the board is developing procedures to solicit applications, methodologies for subsidies and other terms for financial assistance. The board expects these procedures to assist in meeting the agricultural conservation category. No changes to the proposed rules were made in response to this comment.

Comment

ACEC, Austin, NWF, and NTMWD commented on the proposed water conservation criteria that utilize the last 30 years for a historic baseline comparison of gallons per capita per day to the average for the last four years. Comments included that the length of time used to calculate the historic baseline was too long, some entities would benefit from passive conservation savings from efficient plumbing fixture standards, and the current four-year average could include water savings from reduction in use due to drought. NTMWD suggested looking at financial resources devoted toward conservation as an alternative demonstration of water conservation success.

Response

After review, the board is of the opinion that the last twenty years of water use data be considered or, if less than 20 years of data is available, the available data will be considered. Therefore, the rule has been revised to consider 20 years of historic data instead of the proposed 30 years.

Additionally, while the board recognizes weather as one factor impacting water use, it also recognizes that these impacts vary based on myriad of additional factors including but not limited to time of year, demand, and water source. The board is of the opinion that using rolling four-year averages adequately addresses this concern. Changes to the proposed rule were made as more specifically set forth in this comment.

Comment

HCPUA commented that for projects that serve multiple political subdivisions, the scoring system for water conservation should be modified so that municipal water conservation is based on

a weighted scoring system. The entity that receives the most water from a proposed project will then have a larger influence on how municipal conservation is scored.

Response

For projects that serve multiple political subdivisions that do not fall into the category of wholesale water systems, the board will base the water conservation scoring on the political subdivisions that will be served by the project. The board declines at this time to specify in rule the method that it will use in these situations. The board would like to gain some experience with real cases before committing to any one system, so that it avoids any unintended consequences. The board has made no changes in response to this comment.

Comment

Austin commented that alternative criteria should be considered to acknowledge applicants that have achieved and are maintaining desirable gallons per capita per day use that could remain fairly constant over time. Austin's concern is that eventually it can become increasingly difficult and expensive to continue to reduce per capita water use.

Response

The board acknowledges that eventually it will become increasingly difficult to continue to reduce per capita water use. However, the board is of the opinion that at the present time the rule is appropriate. In the near term, cities that have achieved a reduction in per capita water use can receive points under the rule. If the situation changes over time and the board sees that rule changes are warranted, it may initiate rulemaking. As the board and the public gain experience with the rules and the practical implementation of the program, the board will remain open to public input regarding the need for rule changes. No changes to the proposed rule were made in response to this comment.

Comment

Abilene and NTMWD commented that §363.1304(11)(A) should be amended to use residential gallons per capita per day instead of total gallons per capita per day, since it would provide a more consistent measure of water conservation success given that total gallons per capita per day can vary greatly among municipalities.

Response

It is true that total gallons per capita per day can vary widely between cities because of their relative proportions of residential, commercial, institutional, and industrial water users, among other factors. However, this criterion is only comparing entities to themselves, not to other municipalities. Texas Water Code §363.15 regarding Required Water Conservation Plans specifically requires, at a minimum, that water conservation plans include quantified targets and goals for municipal use, which includes residential, commercial, industrial, agricultural, institutional, and wholesale water uses. Since water conservation plans must address these uses, the board believes that total gallons per capita per day is the most appropriate criteria to consider regarding the demonstration of water conservation savings. No changes to the proposed rule were made in response to this comment.

Comment

Corpus Christi inquired about the situation of SWIFT funding if subsequent to the loan award the utility is found to not meet the established threshold for water loss. Corpus Christi wants to know the impact on financing, construction, and scheduling.

Response

An applicant will be evaluated against the threshold of water loss at the time of the application. If financing is awarded, the political subdivision will submit their annual audits and the board will evaluate their progress and performance relative to that threshold. If for any reason a political subdivision that had met the threshold at the time of board financing subsequently fails to meet the threshold, the obligation to use board funding to address water loss will not come into play until the next time the political subdivision comes to the board for financial assistance. The board has not made any changes to the rule as a result of this comment.

Comment

NFBWA, NHCRWA, WHCRWA, and SJRA commented that the proposed water conservation criteria do not recognize that wholesale water providers and retail water suppliers are not similarly situated when it comes to scoring for water conservation.

Response

Though the board acknowledges that wholesale water providers and retail water suppliers may not be similarly situated when it comes to scoring for water conservation, the board is of the opinion that it is important to assess the impacts of conservation efforts on the water savings accomplishments of the end user. As such, the board has added a new section to §363.1304(11) addressing how water conservation criteria will be applied to wholesale applicants. When prioritizing funding of projects under existing TWDB programs, the board uses similar criteria to those outlined herein. The approach entails reviewing historical and current water use data of the wholesale water provider's customer or customers affiliated with the application to determine use figures. The board has added new language to §363.1304(11) to address water conservation scoring for wholesale water providers. Changes were made to the rule as specifically set forth in this response.

Comment

Region M commented that it would be helpful if the TWDB could establish and make public standards for determining or verifying agricultural efficiency measurements.

Response

The board recognizes the concern for standards to determine and verify agricultural water use efficiency. Applications for projects that make significant water efficiency improvements may involve preliminary estimates of efficiency gains based on sound engineering principles and established best management practices. Individual projects will likely differ substantially in the size, scope, and type of activities proposed, thus making standards appropriate to all types of projects difficult to determine beyond those that are generally accepted in principle and practice. TWDB staff monitors professional literature and stands ready to provide technical assistance to interested potential applicants. The board has not made any changes to the rule as a result of this comment.

Comment

Austin commented that an additional set of criteria should be developed specifically for water conservation and reuse projects to help determine which projects are selected to satisfy the 20%

allocation requirement. The additional criteria could include such things as a measure for percent reduction of evaporation losses, for aquifer storage and recovery projects, percent increase in reuse capacity over existing reuse capacity, and existing reuse capacity as a percent of total planned reuse capacity.

Response

The board disagrees with the comment. Under the statute all water conservation and reuse projects will count toward the 20%. The Legislature did not say that only a certain type of water conservation and reuse project will count. Therefore, a separate priority system to differentiate between those projects is unnecessary. The board has made no change in response to this comment.

Comment

Water Smart Software commented that the board should reference the Water Conservation Implementation Task Force's Water Conservation Best Management Practices Guide in the rule. They further commented that the board should add language to the definition of water conservation to emphasize that "water conservation is proven practices, techniques, programs, and technologies that will protect water resources, measurably reduce water consumption..."

Response

The board disagrees with this comment. The definition of water conservation is specific enough to set the boundaries of what will be considered a water conservation project. Reference to a best management practices guide that could become outdated outside of the rulemaking process is inappropriate. While the board understands the benefits of proven and measurable technologies, the board does not want to dis-incentivize innovating and developing technologies that are promising. The board has not made changes to the rule in response to this comment.

Comment

One individual commented that there were not enough points allocated to water conservation.

Response

The board was unable to find a category of points that it felt that it could reduce in order to give this category more points. The board has not made any change to the rule as a result of this comment.

§363.1304(12) - Priority Assigned by Regional Water Planning Group

Comment

H_2O4Texas, Region M, and TAB commented that the priorities established by the regional water planning groups should be the highest consideration in the TWDB's prioritization process.

Response

HB 4 requires the TWDB to establish a point system for prioritizing projects that come to the board for financial assistance from the SWIRFT. The statute requires the board to give the highest consideration to four factors: projects that will serve a large population, projects that provide assistance to a diverse urban and rural population, projects that provide regionalization, and projects that will meet a high percentage of the water supply needs of the water users served by the project. The statute goes on to provide for the board's consideration of other factors in its prioritization system, including the priority given the project by the regional water planning group. The statute did not include the regional planning group's priority ranking as one of the factors that should be given the highest consideration by the board. The rule adopted today, does give the priority assigned by the regional water planning group the most points (along with water conservation) among all those factors listed by the statute as deserving consideration by the board, but not in the group required to receive the highest consideration. The board has not made any changes in response to this comment.

Comment

Austin, H_2O4Texas, TAB, TRWD, and TWCA submitted comments about the TWDB's funding cycle in relation to additional local contributions a water plan project may see after the ranking of a region's prioritization occurs. All commented the board should consider allowing "timely adjustments" where a material change would occur to a water plan project's prioritization score as assigned by a regional water planning group. Further, Austin, TRWD, TWCA, and H_2O4Texas commented that the board should consider allowing for updating the regional level project scores originally provided by the regional water planning groups. In their view, significant steps toward implementation might occur between the time the project was originally scored and the time the sponsor applies for funding. That change, they contend, wouldn't be captured in the point scoring associated with the original regional prioritization. TWCA and H_2O4Texas commented that the board should consider awarding point scores to water plan projects that are equal to the highest point score received by any other related or dependent project.

Response

The board agrees that HB 4 places great emphasis on the ranking of water plan projects at the regional water planning level. Texas Water Code §15.436(c) requires the TWDB to create a stakeholder committee charged with establishing a set of uniform standards for prioritizing water plan projects at the regional level. It is these uniform standards that will address the issue of maintaining appropriate consideration of rankings that occur at the regional level. The board intends with the proposed rules to score projects based on discretely measured end-beneficiaries of each project, which will ensure fair, consistent, and replicable scoring for all projects seeking SWIRFT funding. Larger projects on which other projects depend may already receive higher point scores as a result of the higher total population and volume of water needs of the end users served by these projects. There is no prohibition against the regional water planning groups rescoring their water management strategies as often as they so choose. The board makes no changes to the proposed rules in response to these comments.

Comment

Region H commented that what is considered a project for the purposes of the regional prioritization process is unclear and the list of projects provided to Region H does not realistically reflect the future water supply needs of the state. Region H also commented about the regional prioritization "template" stating that there is not a mechanism to "screen" projects already implemented; that is does not include provisions for key supply relationships among projects; that it requires scoring of many projects unlikely to need to apply for funding; and creates challenges in consistently and realistically scoring phased infrastructure projects.

Response

Region H is referring to the uniform standards to be applied to prioritizing projects at the regional level developed by the stakeholder committee created by the board in accordance with Texas Water Code §15.436(c). The uniform standards are the mechanism by which regional water planning groups prioritize and screen water plan projects. Further, it is these uniform standards that will address the issue of maintaining appropriate consideration of rankings that occur at the regional level. Larger projects on which other projects depend may already receive higher point scores as a result of the higher total population and volume of water needs of the high number of end-users served by these projects. The board intends with the final rules to score projects based on discretely measured end-beneficiaries of each project, which will ensure fair, consistent, and replicable scoring for all projects seeking SWIRFT funding. Currently, project scoring allocates 15% of potential points based on regional prioritization. Actual scoring of a specific application will be based upon all relevant facts that weigh into a project's scoring. No changes to the proposed rules were made in response to this comment.

Comment

Environment Texas commented that the prioritization rules for regional planning group ranking should be amended to account for input from other affected regions. In the situation where a project to benefit one region is to be built in another region that strenuously objects to the project, points under this category should be allocated based on the average of the two groups' prioritization of that project.

Response

The board disagrees with this comment. The statute provides that the priority system must consider, "the priority given the project by the applicable regional water planning group..." (emphasis added); not groups. Texas Water Code §15.437(d)(7). The board understands the legislative intent to be that each regional water planning group would prioritize projects in their plan that meet a water supply need. There is nothing in the legislation to suggest that the board is to integrate one regional water planning group's prioritization with another group's objection to render a composite score in the regional planning groups' prioritization that would then be incorporated into the final board prioritization. The board has not made any changes to the rule in response to this comment.

Comment

NTMWD commented that the board should revise the rankings awarded by the regional planning groups by removing from consideration those projects within a regional ranking list which are not actual itemized projects. For example, Region C, generally identified "municipal conservation" as a strategy that was scored high in the regional water planning groups' prioritization. Other regions that did not have many or any "municipal conservation" strategies will have their projects score higher in this criterion.

Response

The board appreciates the comment and understands the concern. However, the board cannot ignore the regional prioritizations or short-circuit the rank order of projects determined under Texas Water Code §15.437(d)(7). No change has been made to the rule as a result of the comment.

§363.1304(13) - Tie Breakers

Comment

Sierra Club and the Nature Conservancy commented that they support using water conservation as a tie breaker.

Response

The board appreciates the comment. No changes have been made to the rule as a result of this comment.

§363.1304 - Prioritization Criteria - Additional Criteria

Comment

Representative Lon Burnam, Clean Water Action, Environment Texas, Galveston Bay Foundation, National Wildlife Federation, Nature Conservancy, Sierra Club, and 8,789 individuals commented that the board should adopt additional prioritization criteria that would award additional points to projects that have additional positive environmental benefits. Representative Burnam states that HB 4 authorizes this, and its legislative purposes included ecological objectives. Environment Texas further suggested that the point system should also be structured to avoid projects with significant harm to aquatic systems. Environment Texas suggested a multi-objective approach to water creation that maximizes environmental benefits and minimizes adverse impacts to rivers. Environment Texas and numerous individuals pointed out that providing water for instream flows or the use of the Texas Water Trust are vehicles that could be used for ecologically beneficial projects.

Response

HB 4 requires the TWDB to establish a point system for prioritizing projects that come to the board for financial assistance from the SWIRFT. The statute requires the board to give the highest consideration to four factors: projects that will serve a large population, projects that provide assistance to a diverse urban and rural population, projects that provide regionalization, and projects that will meet a high percentage of the water supply needs of the water user groups served by the project. The statute goes on to provide for the board's consideration of seven other factors, several with sub-factors, in its prioritization system. The statute did not include environmental benefits as a factor that the board must consider in prioritizing projects. The board has decided to limit the prioritization system to just the legislatively required factors and to assess the required factors by objective measurements of the criteria. The board is at a loss as to how it would objectively assign point values to quantify environmental benefits.

The board has an alternative mechanism for considering environmental concerns on SWIFT/SWIRFT projects. Before the board's decision to fund a project, the project will undergo an environmental review in which the regulatory agencies can provide comments on the project. The executive administrator prepares a report to the board, which the board considers before the board makes a decision on funding the project.

The board has not made any changes to the rule in response to this comment.

Comment

SAWS commented that reliability of the water supply provided by a project should be addressed in this section in order to achieve the goal of providing an adequate water supply for the future of the state.

Response

TWDB's regional water planning rules and guidelines in 31 TAC Chapter 357 require that regional water planning groups evalu-

ate water management strategies based on several outlined criteria, which include reliability of supply under drought of record conditions. As a result it is unnecessary to add reliability as an additional prioritization criterion in the rule. No changes to the proposed rule were made in response to this comment.

Comment

TPWD commented that the rules should add prioritization criteria that address potential agricultural and natural resource impacts associated with proposed water management strategies. TPWD states that regional water planning groups are required by statute and rule to conduct a quantitative analysis of impacts to agricultural and natural resources associated with proposed water projects, citing Texas Water Code §16.053 and 31 TAC §358.4(b)(3) and (6).

Response

Texas Water Code §16.053 requires the board to approve a regional water plan, "only after it has determined that:...the plan is consistent with long term protection of the state's water resources, agricultural resources and natural resources..." SWIRFT and SWIFT financial assistance is only for projects that are water management strategies in the state water plan. Therefore, all qualified projects submitted to the TWDB for prioritization will be water management strategies that the board has already approved after having determined that it is consistent with the long-term protection of agricultural and natural resources. Further, the board has decided to minimize the complexity of the prioritization system by limiting it to just the legislatively required factors. The board has not made any changes to the rule in response to this comment.

Comment

Water Smart Software commented that the prioritization system should incorporate cost-effectiveness criteria. League of Independent Voters of Texas commented that sustainable development should be prioritized.

Response

Sustainability and cost-effectiveness are required elements in the prioritization of projects by regional water planning groups. Texas Water Code §15.436(a)(4)(5). The ranking of projects by the regional water planning groups is effectively incorporated into the board's prioritization system. Texas Water Code §15.437(d)(7). The board does not see the need to, in effect, double count sustainability and cost-effectiveness by adding them into the board's scoring. The board has also decided to minimize the complexity of the prioritization system by limiting it to just the legislatively required factors. The board has made no changes in response to this comment.

Comment

Sierra Club and U.S. Capital Advisors commented that it does not believe that at this time additional points need to be added specifically for rural, agricultural irrigation, or reuse projects.

Response

The board acknowledges the comment. No change has been made to the rule as a result of the comment.

Comment

Population Media Center, Texas Drought Project and five individuals commented that reservoirs should not be funded under this program. Two individuals commented that reservoirs should not be funded unless the applicant had maximized water recycling and reuse. One individual commented that innovative recycling should be granted more points than a reservoir project. 6,062 individuals commented that the board should avoid projects that could cause serious damage to our rivers.

Response

The board is very mindful of the role and authority given to it by the Legislature. The Legislature has given the Texas Commission on Environmental Quality (TCEQ) the authority to grant or deny state water right permits. A water right permit is generally required for any surface water project that could be eligible for financial assistance. As part of that permitting process, the TCEQ is required to consider environmental factors before deciding to grant or deny the permit. Groundwater projects may require a permit from a local groundwater conservation district, which has certain regulatory powers. Many of the water plan projects eligible for SWIFT/SWIRFT funding require federal environmental permits as well. Before the board will fund any project, the project undergoes an environmental review in which the regulatory agencies can provide comments on the project. The executive administrator prepares a report to the board, which the board considers before the board makes a decision on funding any project. That process is the mechanism that the board uses to evaluate environmental issues and concerns prior to funding water projects.

The Legislature required the board to prioritize projects based on specific criteria given in HB 4. That prioritization methodology did not include a prioritization based on a hierarchy of desirable technologies. The various options for meeting future water needs are decided at the regional water planning group level. In order to keep the prioritization method as simple as possible the board has elected to not adopt additional criteria over and above that which the board is directed to consider in the legislation.

The board has not made any changes in response to this comment.

Comment

Population Media Center commented that projects that support efforts to modernize existing pipelines and prevent waste and loss should be given priority over all new construction projects. They further commented that no new construction projects should be funded in any area that has not first taken all efforts toward conservation.

Response

As required by statute, the board can only grant an application for financing if the board finds that at the time of the application the applicant has submitted and implemented a water conservation plan. Texas Water Code §15.435(g)(1). This provision is implemented in the rule, §363.1309. Further, under the water loss rules to be adopted by the board shortly, the board is not able to finance a project unless the applicant has water loss less than a threshold set by board rule or the applicant is also taking steps to reduce water loss down to the threshold. Between these provisions, the board is of the opinion that it has adequately addressed the concerns of the commenter. No changes were made in the rule in response to this comment.

§363.1305 - Use of Funds

Comment

NFBWA commented that it supports the proposed "Use of Funds," rule.

Response

The board appreciates the comment. No change was made in the rule in response to this comment.

Comment

LCRA and TRWD commented that the term of the loan be matched to the expected useful life of the facility, which can exceed 30 years, or include 40-year amortizations as now allowed in bond markets.

Response

Statutory limitations require the terms of a loan to not exceed the lesser of the expected useful life of the facility, or 30 years. Water Code §15.435(c)(2). This limitation prevents the removal of the 30 year provision. No change to proposed rule was made in response to this comment.

Comment

TRWD recommends the board seek legislation authorizing the use of 40 year amortizations.

Response

The board's current authorization per §15.435 of the Water Code is the lesser of 30 years or the useful life of the project and the board wishes to have some experience with the program before making legislative policy recommendations regarding the program. No changes to the proposed rule were made in response to this comment.

Comment

Corpus Christi commented that it is unclear whether TWDB has the option of buying down interest rates.

Response

Under Water Code §15.435(c)(1) and the rule, §363.1305(a)(1), the board can use funds from SWIFT to make loans below the board's cost of funds, but not lower than 50 percent of the board's cost of funds. The board believes the rule is sufficiently clear. No changes were made to the rule in response to this comment.

Comment

Upper Trinity Regional Water District commented that they will greatly benefit from the deferral option. City of Houston commented that loan deferral during construction is a huge benefit as long as the payback period is not too short.

Response

The length of the SWIRFT loan deferral will be determined by the board based on the needs of the applicant and the impacts to the long-term viability of the SWIFT/SWIRFT program. The TWDB will provide a range of the subsidies (or minimum subsidy) that will be available for each funding structure under SWIRFT with the solicitation of applications for the initial round of State Water Plan funding. No changes to the proposed rules were made in response to this comment.

Comment

Corpus Christi commented that the TWDB should remain flexible with how the TWDB phases in principal repayment. The TWDB should have some discretion to smooth the shock of a water rate increase or eliminate the need for an increase altogether if the project is a water conservation project.

Response

The board intends to remain flexible regarding the terms of deferral of loan repayments. Each deferral will be negotiated with the applicant on an application by application basis. How the terms of the deferral will effect rate increases will depend on a lot of factors, but any rate increase is a local decision. Whether a rate increase is needed or not will depend on local utility income, existing debt and operating expenses and amounts financed. No changes have been made to the rule in response to the comment.

Comment

The Comptroller noted that the SWIRFT is allowed to refinance projects under Water Code §15.474. The Comptroller asked if the TWDB would consider drafting rules related to refinancing. The Comptroller further asked if refinancings would be scored for priority ranking in the same manner as other projects under the priority rules.

Response

At this time the board has not proposed rules related to refinancings to allow the board the maximum flexibility to deal with those issues on a project by project basis. Refinancings will be scored using the same priority ranking in the same manner as other projects. No changes to the rule have been made in response to this comment.

Comment

LCRA commented that SWIFT loan funds should be allowed to refinance existing debt obligations for approved facilities. LCRA also commented that SWIFT loan funds should be eligible to retire existing debt obligations related to the approved facility.

Response

Currently, statute does not provide for the refinancing of existing debt obligations directly using SWIFT funds. SWIFT funds can be used via a bond enhancement agreement to provide additional security for general obligation bonds or revenue bonds issued by the TWDB to finance or refinance projects included in the state water plan in accordance with Texas Water Code §15.435(b). Refinancing of existing debt obligations may be available under terms specified by the TWDB utilizing SWIRFT funds. Texas Water Code §15.474 states that financial assistance provided from the SWIRFT fund may be used by the TWDB to provide financing or refinancing, under terms specified by the TWDB, for projects included in the state water plan authorized under Subchapters Q or R in Chapter 15; Subchapters E or F in Chapter 16; or Subchapter J in Chapter 17, including water conservation or reuse projects designed to reduce the need for this state or political subdivisions of this state to develop additional water resources. Section 15.435(e) allows for SWIFT bond enhancement agreements for refunding bonds only if the refunded bond proceeds have been or will be used for state water plan projects. The proposed rules do not prevent the TWDB from utilizing SWIRFT financial assistance to refinance a project nor SWIFT bond enhancement agreements for refunding bonds. Refinancing and refunding will be a policy decision made by the board.

No changes to the proposed rules were made in response to this comment.

Comment

LCRA commented that the board should allow the integration of the scheduled SWIFT loan maturities within the applicant's

existing and upcoming scheduled debt portfolio to the extent it reasonably conforms to the applicant's financial goals.

Response

The board is willing to work with applicants' financial goals and make every effort to reasonably accommodate the applicant's preferred schedule of payments to the board. The board does note that it typically pools multiple applications when it seeks its fundings so that necessitates a balancing of the various applicants' interests. This means that these issues have to be worked out on a bond issuance by issuance basis. The board has made no changes to the rule in response to these comments.

Comment

TWCA commented that the rule regarding term and use of funds be amended to allow the use of funds similar to the municipal bond market, such as the ability to do wrap-around funding instead of only level debt.

Response

The board is open to the possibility of structuring wrap-around fundings. Details of this type of financing will have to be worked out on a project by project basis. This is another reason that the board has elected not to write detailed rules on how financing will be structured. No changes to the rules are necessary to accommodate wrap-around fundings. No changes to the rules have been made in response to this comment.

§363.1306 - Interest Rates for Loans

Comment

The Comptroller commented that §363.1306(2)(B) and (C) indicate the executive administrator will reduce the market rate by a subsidy. The Comptroller suggested replacing "will" with "may" in order to give the TWDB additional flexibility.

Response

The board agrees that it should preserve the maximum flexibility to set the terms and conditions of the financing within the bounds of the statute. This flexibility is necessary to have the active financial management of the program so as to carry out the intention of the Legislature under varying market conditions. Under the rule, the board has discretion to set an interest rate subsidy and discretion as to the amount of the subsidy. Once the subsidy is set by the board, the executive administrator has no discretion in applying the subsidy, if any, to the market rate. The rule has been reworded to clarify the board's intent. Changes were made in response to this comment as specifically set forth in this response.

Comment

Upper Trinity Regional Water District and LCRA commented that the interest rates should be set as close to the 50% maximum as reasonably practical. LCRA commented that the TWDB assign interest rates that are fixed for the entire loan term and determine both the term and interest rate within a timeframe at least 60 to 90 days prior to the anticipated closing.

Response

The TWDB will provide a range of the subsidies (or minimum subsidy) that will be available for each funding structure under SWIRFT with the solicitation of applications for the initial round of state water plan funding. The TWDB expects that the terms of the financial assistance provided to applicants will be tailored to best fit the needs of the applicants and to benefit the long-term viability of the fund. The TWDB expects that the terms of the financial assistance will change based on each round of applications. Interest rates on the loans provided to applicants under this program will depend in part on the TWDB's cost of funds as the TWDB issues bonds. Because the interest rate that the bond market charges to the TWDB will vary over time, the interest rate that the TWDB offers political subdivisions will also vary over time. In addition the amounts and types of funding provided to political subdivisions in preceding fundings affect the amounts and types of funding that can be provided to subsequent applicants while still protecting the corpus of the fund and the TWDB's ability to offer financing on attractive terms. The proposed §363.1306 (relating to Interest Rates on Loans) identifies the timing and general method that the board would use to set the interest rates for SWIFT and SWIRFT project funding and payment deferrals. The proposed §363.1303(c) indicates that the board will establish the subsidy at the time it approves the prioritization of the abridged applications and 30 days before an applicant would need to submit a complete financial assistance application. No changes to the proposed rules were made in response to these comments.

Comment

LCRA commented interest rates should be provided 90 days before the anticipated closing of the loan and that after 90 days rates should be reconsidered.

Response

The board will work with applicants to provide timely information so that applicants can make their own prudent financial decisions. The board expects to have expedited closings and delivery of funds, minimizing the time between the board obtaining funds and closing and delivery of funds to applicants. No changes to the rule were made in response to the comment.

§363.1307 - Pre-design Funding Option

Comment

LCRA and TxWIN commented that entities developing reservoirs should be able to receive a commitment for construction funds prior to completing the planning, permitting, and design of that reservoir. Sierra Club strongly supported the requirement in the proposed rules that applicants must complete planning, permitting, acquisition, and design before receiving a commitment to fund reservoir construction.

Response

The TWDB understands the effort involved and the potential time required for regulatory permitting of reservoir projects. The TWDB believes that it is the agency's fiduciary responsibility to not offer a commitment for construction of a reservoir until a project sponsor has completed this effort, clearly identifying the scope of the project including any mitigation. No changes to the proposed rules were made in response to these comments.

Comment

Sierra Club commented that subsection (c) should be changed to provide that the available information could come from the applicant or other appropriate sources and that "there appear to be no significant permitting..." should be changed to "there are no significant permitting..."

Response

The board disagrees with the comment. The proposed rule states that the board action will be based on available informa-

tion. Where the information can come from is not specified, so under the rule as written, the information can come from other appropriate sources. No change to the rule is necessary in that respect.

This section of the rule relates to the pre-design funding option where an applicant may seek financing for completion of planning, permitting costs, and design for the project. It is during these activities that many environmental issues are first uncovered and alternative designs are developed in an attempt to eliminate or minimize any environmental issues. Failing that, environmental mitigation plans are developed. At this stage of the project it is too early in the process to state with certainty that there are, or are not, significant permitting, environmental, engineering, or financial issues. No changes have been made to the rule in response to this comment.

Comment

NWF and Sierra Club commented that in subsection (d)(1), which refers to "known" permitting, social or environmental issues, should be expanded to include "reasonably anticipated" permitting, social, or environmental issues. NWF believes that if an issue is reasonably anticipated, it should be addressed in the application.

Response

At the application for pre-design funding stage of the project, which is addressed by this subsection in the rule, there often is very little information on social or environmental issues available to the applicant. One of the purposes of the pre-design funding is to fund the discovery and addressing of these issues. Addressing social and environmental issues in the pre-design funding application is to put the cart before the horse. No changes were made in the rule in response to the comment.

Comment

NWF and Sierra Club commented that subsection (f) appears to limit the executive administrator to considering only information provided by the applicant in making a report on known or potentially significant social or environmental concerns. NWF suggests that the executive administrator should make use of all "readily available" information in preparing the written report. NWF also notes that the proposed rule has the executive administrator preparing a report to himself. NWF suggested that the report should go to the board.

Response

The board does not agree that the proposed rule limits the executive administrator to only use the information supplied by the applicant when making the report to the board. The executive administrator also uses other information available in making the report. In order to make its intent clear, the board has modified the rule in response to this comment. The board has also modified the rule to state that the report will go to the board. Changes were made to the proposed rule as specifically set forth in this response.

Comment

Sierra Club commented that this subsection (g) should be expanded to require the executive administrator to also advise the board as to the impacts of those projects on the agricultural, water, and natural resources of the region in which the project is located as identified in the relevant regional water plan or plans and the impact of those projects on political subdivisions, landowners, and the environment if environmentally related special mitigative or precautionary measures are not implemented.

Response

The board disagrees in part with the comment. The regional plan is one source of information available to the executive administrator and routinely will be consulted in the preparation of the report to the board. No change to the rule is necessary to allow the executive administrator to use the regional plans as a source of information. The additional information suggested to be added to the report is too detailed to be provided at the pre-design stage of the project development process. The board has declined to make any changes to the rule in response to the comment.

§363.1308 - Board Participation Program

Comment

NFBWA and SJRA commented that they support the Board Participation program as proposed. SJRA believes that it will encourage applicants to "right-size" their projects.

Response

The board appreciates the comments. No change was made in response to these comments.

Comment

LCRA commented that §363.1308(b)(2) appeared to be a typographical error. The reference should be to §363.1309.

Response

The TWDB appreciates this comment and has corrected the typographical error in the final rule to make the reference to §363.1309. Changes were made to the proposed rule as specifically set forth in this response.

Comment

TxWIN commented that a specific reference to Texas Government Code §2269 should be inserted into language of §363.1308(d), regarding procedures for advertising for bids and selection of a bidder to construct the project.

Response

Section 363.1308(d) requires the TWDB and a financial assistance recipient through SWIRFT funding to execute a master agreement that requires the designated political subdivision to ensure that proper procedures are observed during the bidding process for public notice and construction selection requirements. The TWDB declines to provide a specific reference to a statute since statutes may be amended or moved from one section of the code to another from time to time. No changes to the proposed rules were made in response to this comment.

Comment

TxWIN commented that the board may want to reconsider the prioritization criteria used for projects ready to proceed, changing it from 18 months to 12 months as proposed in §363.1304(10) since the prioritization criteria seem to be in conflict with §363.1308(g)(3).

Response

Section 363.1308 details the procedures by which the TWDB will acquire an ownership interest in a water supply project that a financial assistance recipient will buy back over time. These requirements are similar to the TWDB's existing state participation program. The proposed rules describe how a proposed pur-

chaser would proceed with acquiring the TWDB's ownership interest, which could be with local funds or through financial assistance from any other TWDB funding programs other than Board Participation. The 12-month period of §363.1308(g)(3) refers to the time period in which any board financial assistance for the acquisition of the ownership interest will be available. This is typically years after the project construction was complete. The 18-month time period of §363.1304(10) refers to the time between the first application for financial assistance and construction. No changes to the proposed rules were made in response to this comment.

Comment

TWCA and TRWD commented on the administrative cost fee proposed in §363.1308(h). TWCA's understanding was that the fee only applied to projects seeking state participation. TWCA encourages the board to affirm the interpretation. In addition, it also commented that a cap should be placed on total fees and costs an applicant may be required to pay as a percentage of a funded program under any of the TWDB's programs.

Response

The fee proposed in §363.1308(h) was for administrative costs associated only with the Board Participation program (known also as State Participation) financed with SWIFT/SWIRFT funds. The board has determined this administrative fee will not be necessary for Board Participation funded through SWIRFT and will delete this provision. Caps on fees in other board programs will have to be addressed in those other programs' rules. Subsection (h) was deleted in response to this comment. Changes were made to the proposed rule as specifically set forth in this response.

§363.1310 - Action of the Board on Application

Comment

TRWD and TWCA commented that there should be the option to make funds available to the project owner prior to soliciting bids for construction. TRWD commented that all funds should be delivered to the political subdivision on issuance and eliminate the requirement that funds be placed into escrow.

Response

TWDB's existing rules in Chapter 363, Subchapter A, provide for the release of funds that is consistent with the agency's statutory duties and fiduciary responsibilities. The rules provide for the release of construction funds from a project owner's escrow account to the project owner's construction account upon submittal of the necessary bid documents and prior to the project owner issuing the notice to proceed. The project owner will then have access to the funds prior to the start of construction, and the project owner is responsible for managing those construction funds in relation to its contractor schedule. No changes to the proposed rules were made in response to this comment.

Comment

ACEC, Houston, LCRA, NFBWA, NHA, SJRA, TxWIN, Upper Trinity Regional Water District, U.S. Capital Advisors, and WHCRWA submitted comments about segmented funding of water plan projects. Houston, NFBWA, SJRA, Upper Trinity Regional Water District, U.S. Capital Advisors, and WHCRWA commented that they support the flexibility in 31 TAC §363.1310 to allow for TWDB to commit funds over several years. NFBWA further recommended the inclusion of the preamble discussion related to the multi-year "take-down" schedule in the final rule. However, LCRA commented that a commitment should not be open-ended and recommended specifying the date after which the financial assistance would no longer be available should be at least two years from the date of the approval of the commitment. Similarly, TxWIN commented that the TWDB must be aware that project delays associated with splitting or phasing funding over multiple years could negatively impact construction schedules and costs. TxWIN questioned whether phased funding will still entail the board making a commitment for the entirety of a project.

Response

The board is of the opinion that multi-year take downs are a beneficial option for funding larger projects with high capital costs and longer construction schedules. The board appreciates the support of flexibility in board commitments with a date after which financial assistance will no longer be available. The board believes that the current rule language as proposed is sufficient to allow commitments over multiple years with specific take down amounts each year, and would like to retain flexibility in adjusting the time period. No changes to the proposed rule were made in response to this comment.

§363.1311 - Rural and Water Conservation Reporting

Comment

The State Water Implementation Fund for Texas Advisory Committee and NWF commented that the language of §363.1311(a)(3) and (4) should more closely track the statute. The Advisory Committee points out that Texas Water Code §15.434(b)(2) does identify agricultural irrigation projects as eligible to count toward the 20% requirement but also requires that these projects be "designed for water conservation or reuse."

Response

The board appreciates these comments. After reviewing the statute the board has decided that clarification of the rule is in order. The final rule more closely tracks the language of the statute while preserving the distinction between water conservation and reuse. Agricultural irrigation projects can count toward the 20% requirement, but only if the agricultural irrigation project is designed for water conservation or reuse. Changes have been made to the rule as more specifically set forth in this comment.

Comment

Sierra Club recommended that financial assistance to agricultural water conservation projects should not count toward the 10% set-aside unless the project resulted in an actual reduction in the total amount of water used. If the project leads to enhanced water efficiency and that leads to an expansion of irrigated acreage, then there is no decrease in the volume of water used and that should not be considered conservation for the purpose of meeting the 10% requirement.

Response

The statute requires the board to undertake to apply not less than 10% of project funds to support projects to rural political subdivisions and agricultural water conservation. Texas Water Code §15.434(b)(1). The statute does not contain the additional qualifier that agricultural water conservation projects result in a reduction of the volume of water used. The board declines to read this extra condition into the language of the statute. No change has been made as a result of this comment.

Comment

The State Water Implementation Fund for Texas Advisory Committee commented that the proposed rule in §363.1311 provides significant discretion to the board in allocating project costs among various categories identified in Texas Water Code §15.434(b). The Advisory Committee went on to say that they understood the need for the discretion. The Advisory Committee strongly recommended that the allocations to the various categories be made in a transparent and comprehensible manner and that special attention be paid by the board in implementing this portion of the rule. The Advisory Committee further commented that the board's action so far in implementing HB 4 has been very consistent with those principles.

Response

The board appreciates these comments. In addition to the information required by Texas Water Code §15.440 to be posted on the board's website relating to projects funded by the program and status of those projects, the board commits to posting information by project as to what portion of the project dollars were allocated to the various categories identified in Texas Water Code §15.434(b) and an explanation of the allocation. The board has placed language to this effect in the final rule.

Comment

Abilene commented that it supports categorizing pro rata portions of projects that serve rural areas as contributing toward the 10% funding for rural and agricultural water conservation.

Response

The board appreciates the comment. No change was made in response to this comment.

Comment

The Farm Bureau pointed out that both the term "agricultural water conservation" and the term "agricultural irrigation project" are used in HB 4. The Farm Bureau commented that they believe that the Legislature intended any agricultural project that improves water use efficiency or reduces overall water use would qualify under either category, whereas an agricultural project that secured new sources of water would only qualify under "agricultural projects."

Response

The board acknowledges the similarity between the terms, "agricultural water conservation" and "agricultural irrigation project." As explained above, the board is convinced that the Legislature intended that only agricultural irrigation projects designed for water conservation or reuse could count toward the 20% category. There may be some projects that could fit as either "agricultural water conservation" or as an "agricultural irrigation project." The board does not believe that the Legislature intended the board to count one project as qualifying for both categories. Therefore, if the situation arises where a single project could fit both the 10% and 20% categories, the board will decide on a case-by-case basis as to the best fit for the project and report the project as counting toward only that category. The board's decision will be reported on the board's website and to the elected leadership of the state as required by Texas Water Code §15.440. No change in the rule has been made in response to this comment.

Comment

NWF and Sierra Club comment that to ensure consistency the language in subsection (c) should be similar to the amended language of subsection (a). NWF and Sierra Club suggested language added to the subsection that limited agricultural water conservation projects to those that resulted in net reductions in total water use, and in the case of brush control projects, save quantifiable amounts of water on a sustainable basis that would otherwise be lost to brushy plants. In the case of agricultural irrigation projects, the NWF and Sierra Club wanted language limited to those agricultural irrigation projects that improve the efficiency of water delivery or application, or that incorporate the use of devices to indicate the amount of water withdrawn, or that achieve reuse.

Response

The board agrees that there should be consistency in the language between subsection (a) and subsection (c). In keeping with the board's changes to subsection (a), the board has made changes to subsection (c) that closely track the statute by using the statutory phrase "that are designed for water conservation or reuse" to modify the term "agricultural irrigation project." Changes have been made to the rule as more specifically set forth in this comment.

Comment

Population Media Center commented that water reuse should not count toward the 20% set-aside.

Response

Texas Water Code §15.434(b)(2) provides that the board shall undertake to apply not less than 20% of funds to water conservation and reuse, (emphasis added). The Legislature directed the board that reuse will count toward the 20%; the board does not have discretion to not include reuse projects. The board does understand the legislative intent to be that the 20% is a floor and not a ceiling so that water conservation projects can still be funded even after 20% has been reached. No changes to the rule have been made as a result of this comment.

§363.1312 - Reporting Requirements Regarding Historically Underutilized Businesses

Comment

TxWIN commented that Texas historically underutilized businesses (HUB) requirements only apply to direct state agency bids and procurements; the Texas HUB requirements do not apply to the SWIFT/SWIRFT program. TxWIN also commented that the issuance of the Certificate of Approval by the executive administrator should not be conditioned upon receiving a report on HUB participation from the political subdivision using SWIFT/SWIRFT funding.

Response

The board understands that HB 4 did not change the scope and application of the Texas HUB program. However, HB 4 did impose a new requirement that the executive administrator provide an annual report to the SWIFT Advisory Committee on "the participation level of historically underutilized businesses in projects that receive funding related to a bond enhancement agreement under this subchapter" (emphasis added). Texas Water Code §15.438(n)(2). A bond enhancement agreement is the mechanism used to create the financial package of SWIFT and SWIRFT funds used to provide financial assistance to a political subdivision under HB 4. Texas Water Code §15.435. It follows that information on whether a political subdivision used a HUB on a project funded by SWIFT/SWIRFT must be communicated to the executive administrator so that he is able to

fulfill the reporting requirements set out in Texas Water Code §15.438(n)(2).

The rule does not require political subdivisions receiving SWIFT or SWIRFT funding to use HUBs but only to provide information if a HUB is utilized for any of the projects financed with SWIFT/SWIRFT. Placing this requirement in a rule as a condition for a Certificate of Completion puts the political subdivision on notice that this information will be required and ensures that the information will be promptly reported. No changes to the proposed rule were made in response to this comment.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.1, §363.2

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15 and 17.

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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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15 and 17.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation and Board Participation Projects.

(a) Procedure and method for setting interest rates.

(1) The executive administrator will set interest rates under this section for purchase of the board's interest in state and board participation projects or for loans on a date that is five business days prior to the political subdivision's adoption of the ordinance or resolution authorizing its bonds or drawdown of state participation funds and not more than 45 days before the anticipated closing of the loan or state participation project from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the executive administrator.

(2) For loans from the Texas Water Development Fund II or for rates for the purchase of the board's interest in state participation projects, the executive administrator will set the interest rate at:

(A) the rates established by the board under subsection (b) of this section;

(B) for loans funded by the board with proceeds of bonds, the interest of which is intended to be tax exempt for purposes of federal tax law, the executive administrator will limit the interest set pursuant to this subsection at no higher than the rate permitted under federal tax law to maintain the tax exemption for the interest on the board's bond; and

(C) the board may establish different interest rates for loans under this paragraph in order to facilitate a restructuring of an existing board loan that is in imminent risk of default as determined by the board.

(3) Interest rates for loans from the Water Loan Assistance Fund, or from funds from the board's sale of political subdivision bonds to the Texas Water Resources Finance Authority will be set according to the Municipal Market Data A scale. The board may establish different interest rates for loans under this paragraph if it finds such rates are legislatively directed or are necessary to promote major water initiatives designed to provide significant regional benefit.

(b) Lending and interest rate scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the lending rate scale for loans and the interest rate scale for the purchase of the board's interest in state and board participation projects based upon cost of funds to the board, risk factors of managing the board's loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to schedule loan closings, weighting the funds by dollars and true interest costs of each source. The rate scale shall include the program subsidy, if any. The board will establish separate lending rate scales for tax-exempt and taxable projects from each of the following:

(1) loans from the Texas Water Development Fund II;

(2) loans from the Water Infrastructure Fund;

(3) purchase of the board's interest in state participation projects from the State Participation Account;

(4) loans from the Economically Distressed Area Program Account;

(5) if revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by a political subdivision, the revenue bonds shall bear interest at:

(A) the prevailing state participation lending rate, as set in subsection (b)(3) of this section;

(B) if there is outstanding board indebtedness related to the purchase of its state participation interest, then at the rate then in effect at the time the board provided funds, through the issuance of bonds, to participate in the project; or

(C) a different rate as established by the board, where no schedule for the purchase of the board's interest in the project was fixed at the time the board provided funds to participate in the project; and

(6) loans from the SWIRFT.

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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DIVISION 5. CONSTRUCTION PHASE

31 TAC §363.51

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15 and 17.

§363.51. Inspection During Construction.

After the construction contract is awarded, the political subdivision shall provide for adequate inspection of the project under the supervision of a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and provisions for environmental mitigative measures. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The political subdivision shall take corrective action necessary to complete the project in accordance with approved plans and specifications.

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 G. SMALL COMMUNITY EMERGENCY LOAN PROGRAM
DIVISION 4. CONSTRUCTION AND POST-CONSTRUCTION PHASE

31 TAC §363.731

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15 and 17.

§363.731. Inspection During Construction.

After the construction contract is awarded, the political subdivision shall provide for adequate inspection of the project by a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and provisions for environmental mitigative measures. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The political subdivision shall take corrective action as necessary to complete the project in accordance with approved plans and specifications.

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SUBCHAPTER I. PILOT PROGRAM FOR WATER AND WASTEWATER LOANS TO RURAL COMMUNITIES
DIVISION 4. CONSTRUCTION AND POST-CONSTRUCTION PHASE

31 TAC §§363.951, 363.953, 363.955

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendments affect Texas Water Code, Chapters 15 and 17.

§363.953. Inspection of Projects.

After a construction contract is awarded, the rural community shall provide for adequate inspection of the project by a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and provisions for environmental mitigative measures. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The political subdivision shall take corrective action as necessary to complete the project in accordance with approved plans and specifications.

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SUBCHAPTER M. STATE WATER IMPLEMENTATION FUND FOR TEXAS AND STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS

31 TAC §§363.1301 - 363.1312

STATUTORY AUTHORITY

The new sections are adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The new sections affect Texas Water Code, Chapters 15 and 17.

§363.1302. Definition of Terms.

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

(1) Agricultural water conservation--Those practices, techniques or technologies used in agriculture, as defined in Texas Agriculture Code, which will improve the efficiency of the use of water and further water conservation in the state, including but not limited to those programs or projects defined in Texas Water Code §§17.871 - 17.912.

(2) Agricultural irrigation project--Those projects which improve water delivery or application efficiency on agricultural lands, or involve purchase and installation on agricultural public or private property of new water sources, new irrigation systems, or devices designed to indicate the amount of water withdrawn for agricultural irrigation purposes.

(3) Alternate facility--A construction project that would be necessary to serve the excess capacity of the area to be served by the facility in the event that the facility was not initially constructed to meet the excess capacity.

(4) Commission--The Texas Commission on Environmental Quality or its successor.

(5) Entity--A political subdivision or nonprofit water supply or sewer service corporation.

(6) Excess capacity--The difference between the foreseeable needs of the area to be served by the useful life of the facility and the existing needs for the area to be served by the facility.

(7) Executive administrator--The executive administrator of the board or a designated representative.

(8) Existing needs--Maximum capacity necessary for service to the area receiving service from the facility for current population and including the service necessary to serve the estimated population in the area ten years from the date of the application.

(9) Facility--A regional facility for which an application has been submitted requesting board participation and that includes sufficient capacity to serve the existing needs of the applicant and excess capacity.

(10) Historically Underutilized Business--The meaning assigned by Government Code §2161.001, and the regulations adopted pursuant thereto.

(11) Household Cost Factor--The average annual cost of service per household divided by the median household income.

(12) Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(13) Political subdivision--Includes a city, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 59, any other political subdivision of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code, Chapter 67.

(14) Reuse--The beneficial use of groundwater or surface water that has already been beneficially used.

(15) Rural political subdivision--A nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections, or that otherwise qualifies for financing from a federal agency; or a county in which no urban political subdivision exceeds 50,000 in population based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.

(16) Rural population--Residents of a rural political subdivision.

(17) Urban population--Residents of a political subdivision with a population of more than 10,000 individuals based upon the most current data available from the U.S. Bureau of the Census or board-approved projections.

(18) Water conservation--Those practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water, so that a water supply is made available for future or alternative uses.

(19) Water plan project--A project that is a recommended water management strategy in the current board-adopted state water plan.

(20) Water supply need--Projected water demands in excess of existing supply as identified in the state water plan.

§363.1304. Prioritization Criteria.

The executive administrator will prioritize applications based on the following point system:

(1) Projects will be evaluated on the criteria provided in paragraphs (2) - (5) of this section. The points awarded for paragraphs (2) - (5) of this section shall be the lesser of the sum of the points for paragraph (2) - (5), or 50 points.

(2) Either stand-alone projects or projects in conjunction with other recommended water management strategies relying on the

same volume of water that the project relies on, in accordance with Chapter 357 of this title (relating to Regional Water Planning), that will serve in total when the project water supply volume is fully operational:

(A) at least 10,000 population, but not more than 249,999 population, 6 points; or

(B) at least 250,000 population, but not more than 499,999 population, 12 points; or

(C) at least 500,000 population, but not more than 749,999 population, 18 points; or

(D) at least 750,000 population, but not more than 999,999 population, 24 points; or

(E) at least 1,000,000 population, 30 points; or

(F) less than 10,000 population, zero points.

(3) Projects that will serve a diverse urban and rural population:

(A) serves one or more urban populations and one rural population, 10 points; and

(B) for each additional rural population served, 4 points up to a maximum of 30 points; or

(C) serves only an urban population, or only a rural population, zero points.

(4) As specified in the application, projects which provide regionalization:

(A) serves additional entities other than the applicant, 5 point per each political subdivision served for a maximum of 30 points; or

(B) serves only applicant, zero points.

(5) Projects that meet a high percentage of the water supply needs of the water users to be served calculated from those served and needs that will be met during the first decade the project becomes operational, based on state water plan data:

(A) at least 50 percent of needs met, 10 points; or

(B) at least 75 percent of needs met, 20 points; or

(C) at least 100 percent of needs met, 30 points; or

(D) less than 50 percent of needs met, zero points.

(6) Projects will receive additional points of the project's score on each of the criteria of paragraphs (7) - (12) of this section.

(7) Local contribution to be made to implement the project, including federal funding, and including up-front capital, such as funds already invested in the project or cash on hand and/or in-kind services to be invested in the project, provided that points will not be given for a prior loan through the board that included a loan forgiveness component:

(A) other funding at least 10 percent, but not more than 19 percent, of total project cost, 1 point; or

(B) other funding at least 20 percent, but not more than 29 percent, of total project cost, 2 points; or

(C) other funding at least 30 percent, but not more than 39 percent, of total project cost, 3 points; or

(D) other funding at least 40 percent, but not more than 49 percent, of total project cost, 4 points; or

(E) other funding at least 50 percent of total project cost, 5 points; or

(F) other funding less than 10 percent of total project cost, zero points.

(8) Financial capacity of the applicant to repay the financial assistance provided:

(A) applicant's household cost factor is less than or equal to 1 percent, 2 points; or

(B) applicant's household cost factor is greater than 1 percent but not more than 2 percent, 1 point; or

(C) applicant's household cost factor is greater than 2 percent, zero points.

(9) Projects which address an emergency need:

(A) applicant, or entity to be served by the project, is included on the list maintained by the Commission of local public water systems that have a water supply that will last less than 180 days without additional rainfall, or is otherwise affected by a Commission emergency order, and drought contingency plan has been implemented by the applicant or entity to be served, 3 points; plus

(B) water supply need is anticipated to occur in an earlier decade than identified in the most recent state water plan, 1 point; plus

(C) applicant has used or applied for federal funding for emergency, 1 point; or

(D) none of the above, zero points.

(10) Projects which are ready to proceed:

(A) preliminary planning and/or design work (30 percent of project total) has been completed or is not required for the project, 3 points; plus

(B) applicant is able to begin implementing or constructing the project within 18 months of application deadline, 3 points; plus

(C) applicant has acquired all water rights associated with the project or no water rights are required for the project, 2 or

(D) none of the above, zero points.

(11) Entities that have demonstrated water conservation or projects which will achieve water conservation, including preventing the loss of water:

(A) for municipal projects, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for most recent four-year period:

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) Less than 2 percent total gallons per capita per day reduction, zero points.

(B) for municipal projects, applicant has achieved the water loss threshold established by §358.6 of this title (relating to Water Loss Audits), as demonstrated by most recently submitted water loss audit:

(i) less than the threshold, 5 points; or

(ii) at or above the threshold, zero points.

(C) for wholesale water providers, applicant has already demonstrated significant water conservation savings, as determined by comparing the highest rolling four-year average total gallons per capita per day within the last twenty years to the average total gallons per capita per day for the most recent four-year period based on board water use data for customers affiliated with the application; or significant water conservation savings will be achieved by implementing the proposed project, as determined by comparing the conservation to be achieved by the project with the average total gallons per capita per day for the most recent four-year period for customers affiliated with the application.

(i) 2 to 5.9 percent total gallons per capita per day reduction, 2 points; or

(ii) 6 to 9.9 percent total gallons per capita per day reduction, 4 points; or

(iii) 10 to 13.9 percent total gallons per capita per day reduction, 6 points; or

(iv) 14 to 17.9 percent total gallons per capita per day reduction, 8 points; or

(v) 18 percent or greater total gallons per capita per day reduction, 10 points; or

(vi) Less than 2 percent total gallons per capita per day reduction, zero points.

(D) for agricultural projects, significant water efficiency improvements will be achieved by implementing the proposed project, as determined by the projected percent improvement:

(i) 1 to 1.9 percent increase in water use efficiency, 1 point; or

(ii) 2 to 5.9 percent increase in water use efficiency, 3 points; or

(iii) 6 to 9.9 percent increase in water use efficiency, 6 points; or

(iv) 10 to 13.9 percent increase in water use efficiency, 9 points; or

(v) 14 to 17.9 percent increase in water use efficiency, 12 points; or

(vi) 18 percent or greater increase in water use efficiency, 15 points; or

(vii) less than 1 percent increase in water use efficiency, zero points.

(12) Priority assigned by the applicable regional water planning group within the project sponsor's primary planning region:

(A) top 80 to top 61 percent of regional project ranking, 3 points; or

(B) top 60 to top 41 percent of regional project ranking, 6 points; or

(C) top 40 to top 21 percent of regional project ranking, 9 points; or

(D) top 20 to top 11 percent of regional project ranking, 12 points; or

(E) top 10 percent of regional project ranking, 15 points; or

(F) less than 80 percent of regional project ranking, zero points.

(13) If two or more projects receive the same priority ranking, priority will be assigned based on the relative score(s) from paragraph (11) of this section. If after considering the relative scores of the projects based on the criteria of paragraph (11) of this section, then priority will be assigned based on the relative score(s) from paragraph (9) of this section.

§363.1305. Use of Funds.

(a) The board may use the funds for financial assistance to political subdivisions as follows:

(1) to make loans at or below market interest rates, but not lower than 50 percent of the board's market rate;

(2) to make loans with terms not to exceed the lesser of:

(A) the expected useful life of the project assets; or

(B) 30 years;

(3) to defer loan repayments, including deferral of principal and interest or accrued interest under criteria developed by the board;

(4) to make loans with incremental repurchase terms for an acquired facility, including terms for no initial repurchase payment followed by progressively increasing incremental levels of interest payment, repurchase of principal and interest, and ultimate repurchase of the entire state interest in the facility using simple interest calculations; or

(5) a combination of the financing outlined in paragraphs (1) - (4) of this subsection.

(b) The board may make funding available under subsection (a) of this section only for implementation of water plan projects.

§363.1306. Interest Rates for Loans.

For loans from the SWIFT and SWIRFT, the following procedures will be used to set interest rates.

(1) The executive administrator will set interest rates under this section for loans on a date that is at least five business days prior to the political subdivision's anticipated adoption of the ordinance or resolution authorizing its bonds and not more than 45 days before the anticipated closing of the loan from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the executive administrator.

(2) For loans from the fund, the executive administrator will set the interest rates in accordance with the following:

(A) To the extent that the source of funding is provided from bond proceeds, the lending rate scale(s) will be determined as

provided under §363.33(b) of this title (relating to Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects).

(B) The loan interest rate will be determined based on a debt service schedule acceptable to the executive administrator. The executive administrator will identify the appropriate scale for the borrower and identify the market rate for the maturity due in each year. The board may set an interest rate subsidy. The executive administrator will reduce the market rate by a subsidy as determined by the board and thereby identify a proposed loan interest rate for each maturity. The proposed loan interest rate will be applied to the proposed principal repayment schedule. In no instance shall the subsidy determined by the board exceed 50 percent of the market rate.

(C) For loans made under §363.1305(a)(4) of this subchapter (relating to Use of Funds), which receive deferred principal and interest payments, the executive administrator will identify the appropriate scale for the borrower and identify the market rate for the maturity due in each year. The board may set an interest rate subsidy. The executive administrator will reduce the market rate by a subsidy as determined by the board and thereby identify a proposed loan interest rate for each maturity. The proposed loan interest rate will be applied to the proposed principal repayment schedule.

§363.1307. Pre-design Funding Option.

(a) This loan application option will provide an eligible applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for the pre-design, design or construction costs associated with funding of a project under §363.1305 of this subchapter (relating to Use of Funds). Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and construction funds will be held or escrowed and released in the sequence described in this section. Following completion of planning activities and environmental assessment, the executive administrator may require the applicant to make changes in order to proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity.

(b) Reservoir projects are eligible for a board commitment to fund planning, permitting, acquisition, and design costs under this option. Applicants for reservoir construction funds must complete planning, permitting, acquisition, and design before receiving a commitment to fund reservoir construction costs.

(c) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(d) Applications for pre-design funding must include the following information:

(1) for loans including construction cost, preliminary engineering feasibility data which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected water needs and sources; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services;

(3) evidence that an approved water conservation plan will be adopted prior to the release of loan funds;

(4) all information required in §363.12 of this chapter (relating to General, Legal and Fiscal Information); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

(e) After board commitment and completion of all closing and release prerequisites as specified in §363.42 of this chapter (relating to Loan Closing) and §363.43 of this chapter (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase;

(2) for acquisition and design costs, after receipt of executed contracts for the design phase and upon approval of an engineering feasibility report as specified in §363.13 of this chapter (relating to Preliminary Engineering Feasibility Data) and compliance with §363.14 of this chapter (relating to Environmental Assessment); and

(3) for construction costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(f) The executive administrator will use preliminary environmental data provided by the applicant, as specified in subsection (d) of this section, together with information available to the executive administrator, and make a written report to the board on known or potential significant social or environmental concerns.

(g) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally related special mitigative or precautionary measures from an environmental assessment under §363.14 of this chapter.

§363.1308. Board Participation Program.

(a) Board Participation. Unless otherwise directed by legislation, the board will only use the SWIFT or SWIRFT to provide financial assistance for all or a part of the cost to construct the excess capacity of a water plan project where:

(1) at least 20 percent of the total facility capacity of the proposed project will serve existing need; or

(2) the applicant will finance at least 20 percent of the total project cost from sources other than Board Participation from the SWIFT and SWIRFT.

(b) Application for Assistance. In addition to the information required in §363.12 of this chapter (relating to General, Legal, and Fiscal Information) and §363.1307 of this subchapter (relating to Predesign Funding Option) and any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) a proposed schedule for purchase of the board's interest in the project;

(2) information to demonstrate the findings required in §363.1309 of this subchapter (relating to Findings Required);

(3) if payment under the master agreement is based either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Prior to release of funds, an applicant shall submit executed copies of such contracts to the executive administrator; and

(4) if an election is required by law to authorize participation in the project, the executive administrator may require applicant to provide the election date and election results as to each proposition necessary for the participation of the applicant as part of the application.

(c) Determination. The board may provide funding for board participation from SWIFT and SWIRFT when the information available to the board is sufficient for the board to determine that:

(1) it is reasonable to expect that the state will recover its investment in the facility based upon a determination that the revenue to be generated by the projected number of customers served by the facility will be sufficient to purchase the excess capacity owned by the state;

(2) the estimated cost of the facility as set forth in the application exceeds the current financing capabilities of the area to be served by the facility based on a review of the existing rates of the applicant available for payment of the facility collected from the number of connections at the end of construction and other revenues available for payment of the facility;

(3) the optimum regional development cannot be reasonably financed by local interests based on an assessment of the estimated cost to construct the alternate facility and the revenue to be generated by the projected number of customers of the facility;

(4) the public interest will be served by acquisition of the facility based on a determination that the cost of the facility to the public is reduced by the board's participation in the facility; and

(5) the facility to be constructed or reconstructed contemplates the optimum regional development which is reasonably required under all existing circumstances of the site based on a determination that design capacity of the components of the facility are sufficient to meet the foreseeable needs of the area over the useful life of the facility.

(d) Master Agreement. The board and the political subdivision shall enter into and execute a master agreement the text of which shall include, but not be limited to, the responsibilities, duties, and liabilities of each party, including the responsibility of a designated political subdivision to assure that proper procedures are observed in advertising for bids and selecting a bidder to construct the project; the board's cost of acquisition; procedures for disbursement of board funds for the project; recognition of a political subdivision's right of first refusal prior to any sale of the board's interest in the project; a non-competitive clause; a schedule for purchase of the board's interest in the project by the political subdivision; and any other provisions deemed appropriate and necessary by the board.

(e) Construction. On projects to be constructed or enlarged by a political subdivision or subdivisions, one political subdivision may be designated under an agreement with the board to act as manager for the project and perform the functions customarily performed by a manager-owner.

(f) Disbursement of State Funds. State funds expended for the acquisition and/or development of facilities in a project shall be disbursed in accordance with the provisions of the master agreement and any other contracts by the board pursuant thereto.

(g) Acquisition of Board's Ownership Interest.

(1) A prospective political subdivision purchaser of the board's ownership interest in a facility or of the use of such board interest other than under terms specified in the master agreement shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete application.

(2) Upon receipt of an application by a prospective purchaser of the board's ownership interest in a facility or use of the facility, the board will send notice of its receipt by regular United States mail to all co-owners of the facility, and any users of the facility or water from the facility.

(3) The application shall be scheduled on the board's agenda, and representatives of the prospective purchaser and other interested parties shall be notified of the time of the meeting. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, approve with conditions, or continue consideration of the application. A commitment will include a date after which the financial assistance will no longer be available. That date shall be the end of that month which is twelve months from the month of board commitment.

(4) If the board approves the application, a transfer resolution will be adopted which shall prescribe the terms and conditions necessary for the sale, transfer, or lease, if such terms have not been specified in the master agreement between the board and political subdivision.

(5) Before the board's adoption of the transfer resolution, the executive administrator shall negotiate a transfer agreement with the prospective purchaser regarding the sale, transfer, or lease of board-owned interests. The transfer agreement shall include the interest transferred, the character of the interest transferred, the formula used to compute the price to be paid for the facilities to be acquired, provisions governing lease or rental of facilities, a hold harmless clause, recognition of the right of first refusal of any of the participating political subdivisions, a clause stating the conditions under which the contract may be terminated, and other provisions appropriate to the subject of the transfer agreement including provisions setting standards for operation and maintenance of the project. The attorney general of Texas shall approve as to legality any contract authorized under this subchapter.

§363.1311. Rural and Water Conservation Reporting.

(a) After the loan closing of a project and release of funds to the political subdivision, the executive administrator shall determine what portion of the project funds, if any, qualify as funding for:

(1) rural political subdivisions;

(2) agricultural water conservation;

(3) water conservation, including agricultural irrigation projects designed for water conservation; or

(4) reuse, including agricultural irrigation projects designed for reuse.

(b) For project costs that cannot be assigned to either a qualifying category and non-qualifying portions of the project, the executive administrator will allocate costs proportionately.

(c) The executive administrator will include in the biennial report to the Legislature required by Texas Water Code §15.440, the percentage of SWIFT and SWIRFT funds used to support rural political subdivisions and agricultural water conservation, and the percentage of SWIFT and SWIRFT funds used to support water conservation or reuse, including agricultural irrigation projects, that are designed for water conservation or reuse. The executive administrator will post this information on the board's internet website along with an explanation for the allocation.

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 November 6, 2014.

TRD-201405323

Les Trobman
General Counsel
Texas Water Development Board
Effective date: November 26, 2014
Proposal publication date: July 11, 2014
For further information, please call: (512) 463-8061

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CHAPTER 367. AGRICULTURAL WATER CONSERVATION PROGRAM

31 TAC §367.2

The Texas Water Development Board (board or TWDB) adopts an amendment to 31 TAC §367.2, relating to Definitions, to ensure consistency with recent statutory amendments made to Chapter 6, Texas Water Code, relating to the TWDB. The proposal is adopted without changes as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5319).

DISCUSSION OF THE ADOPTED AMENDMENT

The amendment is necessary because the 83rd Legislature passed House Bill 4, the first article of which made changes to the administration of the TWDB. More specifically Section 1.01 of the bill amended Texas Water Code §6.052 (relating to Members of the Board; Appointment) to change the composition of the board from six members to three members. The former rule, which is amended by this adopted rule, refers to the governing body of the TWDB as having six members.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENT

Adopted Amendment to 31 TAC Chapter 367.2, (relating to Definitions)

The adopted amendment to §367.2 (relating to Definitions) amends the definition of "Board," for purposes of Chapter 367 (relating to Agricultural Water Conservation Program) by deleting any reference to the number of board members serving as the governing body of the state agency, the Texas Water Development Board. The amendment is necessary because the 83rd Legislature passed House Bill 4 which amended Texas Water Code §6.052 (relating to Members of the Board; Appointment) to change the composition of the governing body of the agency from six members to three members. The adopted amendment would implement this legislative change.

REGULATORY ANALYSIS

The board has reviewed the adopted rulemaking pursuant to Texas Government Code §2001.0225, which requires a regulatory analysis of major environmental rules. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The board is required to conduct a regulatory impacts analysis of a major environmental rule when the result of the adopted rulemaking is to exceed a standard set by federal law, unless the adopted rulemaking is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government implementing a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of the adopted rulemaking is to implement new, state statutory requirements imposed by HB 4 on the TWDB to change the composition of the governing body from six to three members. The board has determined that the adopted rulemaking does not meet the definition of "major environmental rule" under that section; therefore, no regulatory impacts analysis of the adopted rulemaking is required. No comments were received by the board on the draft regulatory impacts analysis.

TAKINGS IMPACT ASSESSMENT

The board has determined that the promulgation and enforcement of this adopted rule constitutes neither a statutory nor a constitutional taking of private real property. The adopted rule does not adversely affect a landowner's rights in private real property, in whole or in part, because the adopted rule does not burden or restrict or limit the owner's right to or use of property. The specific intent of the adopted rulemaking is to implement new state statutory requirements imposed by HB 4 on the TWDB to change the composition of the governing body from six to three members. The adopted rulemaking would substantially advance this purpose by amending 31 TAC Chapter 363 to incorporate new statutory requirements. Therefore, the rulemaking does not constitute a taking under Texas Government Code, Chapter 2007 or the Texas Constitution.

PUBLIC COMMENTS

No comments were received on the proposed rule.

STATUTORY AUTHORITY

The amendment is adopted under authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

The amendment affects Texas Water Code, Chapter 17, Subchapter J.

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 November 6, 2014.

TRD-201405324
Les Trobman
General Counsel
Texas Water Development Board
Effective date: November 26, 2014
Proposal publication date: July 11, 2014
For further information, please call: (512) 463-8061

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND

POST-ADJUDICATION CORRECTIONAL FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §343.106, concerning Variance, §343.304, concerning Menu Content, §343.489, concerning Educational Curriculum, and §343.671, concerning Educational Curriculum, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4892).

TJJD also adopts new §343.108, concerning Document Retention, §343.110, concerning Observation Records, §343.284, concerning Disciplinary Review Log, §343.285, concerning Seclusion/Isolation Log, §343.351, concerning Suicidal Youth Log, §343.407, concerning Health Assessment, §343.435, concerning On-Premises Supervision Requirements, §343.461, concerning Applicability of Standards--MOHU, and §343.629, concerning On-Premises Supervision Requirements, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4892).

TJJD also adopts amendments to §§343.100, 343.102, 343.104, 343.200, 343.202, 343.204, 343.206, 343.208, 343.210, 343.212, 343.214, 343.218, 343.220, 343.222, 343.224, 343.226, 343.230, 343.232, 343.236, 343.238, 343.240, 343.242, 343.244, 343.246, 343.248, 343.249, 343.250, 343.262, 343.264, 343.266, 343.270, 343.272, 343.274, 343.300, 343.302, 343.306, 343.308, 343.310, 343.312, 343.314, 343.316, 343.320, 343.322, 343.324, 343.328, 343.330, 343.332, 343.336, 343.338, 343.340, 343.342, 343.346, 343.348, 343.350, 343.352, 343.354, 343.356, 343.358, 343.360, 343.362, 343.364, 343.372, 343.374, 343.376, 343.378, 343.380, 343.382, 343.384, 343.386, 343.400, 343.402, 343.404, 343.406, 343.410, 343.412, 343.420, 343.422, 343.424, 343.426, 343.428, 343.432, 343.434, 343.438, 343.440, 343.442, 343.444, 343.446, 343.448, 343.450, 343.452, 343.454, 343.456, 343.458, 343.460, 343.462, 343.464, 343.468, 343.470, 343.472, 343.474, 343.476, 343.478, 343.480, 343.482, 343.484, 343.486, 343.488, 343.490, 343.491, 343.493, 343.498, 343.600, 343.602, 343.604, 343.606, 343.608, 343.614, 343.616, 343.618, 343.620, 343.622, 343.626, 343.628, 343.630, 343.632, 343.634, 343.636, 343.638, 343.640, 343.642, 343.644, 343.646, 343.648, 343.650, 343.652, 343.654, 343.656, 343.658, 343.660, 343.662, 343.664, 343.666, 343.668, 343.670, 343.672, 343.675, 343.677, 343.680, 343.688, 343.690, 343.700, 343.702, 343.704, 343.706, 343.708, 343.710, 343.712, 343.804, 343.806, 343.808, 343.810, 343.812, and 343.818, concerning Secure Juvenile Pre-Adjudication Detention and Post-Adjudication Correctional Facilities, without changes to the proposed text as published in the June 27, 2014 issue of the *Texas Register* (39 TexReg 4892).

TJJD also adopts amendments to §§343.260, relating to Resident Searches, 343.414, relating to Behavioral Screening, 343.416, relating to Classification Plan, 343.418, relating to Admission Records, 343.612, relating to Admission Records, 343.800, relating to Definitions, and 343.802, relating to Restraint Requirements, with changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4892). With one exception, changes to the proposed text are described later in this notice in the section containing TJJD's responses to public comments. The one exception is in §343.414, which contains a change that is unrelated to the public comments. The change is to delete the reference to an "admission form" and insert a more generic reference to admission documentation.

JUSTIFICATION FOR CHANGES

The justification for these new, amended, and repealed rules is the provision of appropriate conditions of confinement and the enhancement of measures designed to promote the safety of juveniles and staff in pre-adjudication detention and post-adjudication correctional facilities.

SUMMARY OF CHANGES

The amendment to §343.100 adds definitions for the following terms: *bed, confidential setting, constant physical presence, governing board, intern, major violations, medical diet, minor infractions, oral cavity search, pat-down search, perimeter, serious property damage, specialized housing, standard,* and *strip search.* Definitions for *commission* and *standard screening instrument* have been deleted. The definitions of *behavioral health assessment* and *psychological evaluation* have been amended to clarify that each must include a diagnostic impression and must also include psychometric testing using instruments accepted by the American Psychological Association or a similar organization. The definition of *health assessment* has been amended to include a list of required components. The definition of *intra-jurisdictional custodial transfer* has been amended to clarify that the term does not include placing a resident in a private facility that is located within the placing juvenile probation department's jurisdictional boundaries.

The amendment to §343.102 deletes the paragraph that allowed TJJD to establish additional requirements outside of the Texas Administrative Code, deletes the paragraph about the use of headings, and clarifies that the terms *includes* and *including* mean that a non-exhaustive list will follow.

The amendment to §343.104 includes information about variances currently found in §343.106.

The repeal of §343.106 allows for the content of this rule to be consolidated with §343.104.

New §343.108 requires facilities to retain documents mentioned in this chapter for at least one year after the most recent comprehensive monitoring visit, unless another rule in this chapter specifically requires a longer retention period.

New §343.110 establishes documentation requirements that apply to all rules in this chapter in which a juvenile supervision officer is required to observe and record a resident's behavior.

The amendment to §343.200 includes only minor, non-substantive changes.

The amendment to §343.202 clarifies that a person under the jurisdiction of a juvenile court who does not meet the definition of "child" in Texas Family Code §52.02 may be admitted into secure juvenile facilities.

The amendments to §343.204 and §343.206 include only minor, non-substantive changes.

The amendment to §343.208 clarifies that the facility's zero-tolerance policy must address sexual abuse as defined by Chapter 358 of this title, not necessarily as defined by the Prison Rape Elimination Act of 2003.

The amendment to §343.210 deletes the subsection about the facility administrator's qualifications. That topic is already addressed in Chapter 344 of this title.

The amendment to §343.212 clarifies that having a satellite office at a facility does not meet the requirement for the facility administrator's office to be located on the grounds of the facility.

The amendment to §343.214 includes only minor, non-substantive changes.

The amendment to §343.218 clarifies that the rule does not require sight-and-sound separation of pre- and post-adjudication populations. The amended rule also clarifies that supervision ratios for pre- and post-adjudication populations must be separate and distinct during program hours. However, an officer may count toward both supervision ratios during non-program hours if the residents are in single-occupancy units.

The amendment to §343.220 requires the facility to prepare a population roster that is current as of 5:00 a.m.

The amendment to §343.222 clarifies that rooms and areas of the facility are not required to be heated or cooled if residents are restricted from entering them. The amended rule also clarifies that the alternate means of ventilation must include a mechanical means of bringing in air and exhausting air.

The amendment to §343.224 clarifies that flashlights do not constitute emergency lighting and that inspections of the alternate power source must be documented. The amended rule also requires the facility to maintain a log of all tests, inspections, and maintenance of the alternate power source system.

The amendment to §343.226 exempts facilities operating before September 1, 2003, from the requirement to provide natural light in each housing unit. The amended rule also requires facilities that began operating on or after September 1, 2003, to provide a natural light source in each single-occupancy room/cell or a viewing window that allows for a direct line of sight to natural light.

The amendment to §343.230 clarifies that a washbasin that produces only warm water is acceptable. The amended rule also clarifies that specialized housing rooms/cells must have access to natural light if required by §343.226 and that specialized housing rooms/cells must meet the applicable spatial requirements for non-specialized housing rooms/cells. The amended rule also specifies the circumstances under which a resident's mattress may be removed.

The amendments to §343.232 and §343.236 include only minor, non-substantive changes.

The amendment to §343.238 prohibits storing hazardous materials in the housing area, allows residents to use paint if access and use is strictly controlled by staff, and clarifies that any use of paint or cleaning agents must be part of routine housekeeping or maintenance assignments. The amended rule also requires staff to provide residents with the proper protective equipment when using hazardous materials and to know the location of and follow the Material Safety Data Sheet guidelines. Clarification has been added to reflect that the facility must maintain a list, rather than an inventory, of all hazardous materials used in the facility.

The amendment to §343.240 requires all facilities that are constructed, majorly renovated, or expanded after January 1, 2015, to be designed, built, and maintained according to the National Fire Protection Association's Life Safety Code ® standards. The amended rule allows facilities to be inspected under the International Fire Code ®, but it no longer allows facilities to be inspected solely under applicable state or local fire safety codes. The rule also allows a person who is certified by the Texas Commission on Fire Protection, but not a member of a governmental entity, to conduct the facility's fire/safety code inspections. The rule clarifies that only inspections that include verification/enforcement of all applicable fire code regulations will count towards the requirement to have an annual inspection. Additionally, the rule clarifies that the corrective action plan is not required to include violations or deficiencies that are immediately fixed.

The amendment to §343.242 clarifies that the fire authority (not the fire department) legally committed to serve the facility must review the fire safety plan. The rule prohibits space heaters within a facility's secure perimeter. The rule also requires the fire safety plan to address storage of combustible personal property in sleeping rooms and to include a requirement for each staff member to be instructed and drilled on his/her fire-related duties during new employee orientation and annually.

The amendment to §343.244 clarifies that the designation of a fire safety officer must be in writing. Several new responsibilities of a fire safety officer are also specified.

The amendment to §343.246 requires each staff member to be instructed and drilled on his/her fire-related duties during new employee orientation and at least annually. The rule also requires the facility to keep a fire drill log.

The amendment to §343.248 adds specific areas that must be addressed in the emergency preparedness plan.

The amendment to §343.249 clarifies that the prohibition on firearms in the facility does not include peace officers responding to an active criminal event.

The amendment to §343.250 includes only minor, non-substantive changes.

The amendment to §343.260 clarifies that pat-down searches of residents must be conducted by same-gender staff. The amended rule requires the facility to have written policies and procedures relating to resident searches and prohibits certain types of conduct while staff members are conducting searches. The rule requires the facility to document the probable cause justifying an anal or genital body cavity search and now allows physician assistants (in addition to physicians) to conduct these searches.

The amendment to §343.262 includes a list of specific hygiene items that must be provided to residents and specifies which items must not be shared between residents.

The amendment to §343.264 clarifies that *strenuous exercise* does not include physical education class for purposes of the requirement to offer a chance to shower.

The amendment to §343.266 clarifies that a facility may provide one sheet and a mattress cover instead of providing two sheets. The rule also requires the facility to document when a resident is provided blankets instead of sheets due to actual or expected misuse of linens.

The amendment to §343.270 requires the facility to issue clean clothing (other than undergarments and socks) no more than 72 hours apart. The rule also prohibits the facility from requiring a resident classified as a suicide risk to wear overtly suicide-resistant clothing while the resident is with other residents.

The amendment to §343.272 includes only minor, non-substantive changes.

The amendment to §343.274 moves the definitions of *major violation* and *minor infraction* to §343.100.

New §343.284 requires the facility to keep a log showing the residents who have requested an informal disciplinary review, a formal disciplinary review, or an appeal of a formal disciplinary review.

New §343.285 requires the facility to keep a log that lists all residents who have been placed in any type of seclusion or isolation and the start/end times.

The amendment to §343.300 includes only minor, non-substantive changes.

The amendment to §343.302 clarifies that the menu plan must include all meals and snacks. The amendment also deletes the requirement for menu substitutions to be of equal portions and equal nutritional value as the regular items.

The repeal of §343.304 allows for the content of this rule to be consolidated with §343.300.

The amendment to §343.306 clarifies that the facility must make a reasonable and equitable effort to provide a religious diet within the limits of resources and the facility's need for safety, security, health, and order. The amended rule also requires the facility to document the provision of a religious diet in the resident's record.

The amendment to §343.308 clarifies that meals served to residents in their rooms must meet the same nutritional requirements as other meals.

The amendments to §343.310 and §343.312 include only minor, non-substantive changes.

The amendment to §343.314 removes the option for a private facility to maintain a permit from the local health department if the private facility is located in an area regulated by the Department of State Health Services (DSHS). The amended rule also adds an exemption from the requirement to maintain a permit from the local health department or DSHS for county-operated facilities that are located in an area without a local health department. In such cases, the facility must maintain a current inspection by the Public Health Sanitation Group within DSHS.

The amendment to §343.316 clarifies that facilities that do not regularly receive food from an off-site source are not required to maintain a copy of the off-site source's permits/licenses.

The amendment to §343.320 clarifies that the designation of the health service authority must be in writing.

The amendment to §343.322 adds a list of 12 topics that must be addressed in the facility's health service plan.

The amendment to §343.324 clarifies that the designation of the health services coordinator must be in writing. The amended rule also requires the facility to work with the health service authority to determine the topics for training a health services coordinator who is not a health care professional.

The amendment to §343.328 includes only minor, non-substantive changes.

The amendment to §343.330 specifies that determinations as to what type of testing and treatment may be necessary for a victim of abuse must be made by or in consultation with a health care professional.

The amendment to §343.332 specifies that determinations as to what type of assessment and counseling services may be necessary for a victim of sexual assault must be made by or in consultation with a mental health provider.

The amendment to §343.336 requires the facility's policy on medication to include several specific provisions relating to medication brought by a parent/guardian, requires all medication prescribed to a resident to be administered, and requires each administration of medication to be documented. The amendment also clarifies that the health services coordinator may authorize a deviation from the instructions on an over-the-counter medication only if he/she is a health care professional. The rule also requires the facility to document all deviations from the instructions on over-the-counter medications and the reasons for the deviation.

The amendment to §343.338 adds a requirement for the facility to obtain a written recommendation from a health care professional as to the need for a resident's continued medical isolation and need for ongoing treatment. This requirement applies only when a health care professional did not originally place the resident in medical isolation.

The amendment to §343.340 requires the facility to document the consultation with a mental health provider concerning development of the suicide prevention plan. The amended rule also adds several specific topics that must be addressed in the suicide prevention plan.

The amendment to §343.342 requires the facility to document the yearly review of the suicide prevention plan in consultation with a mental health provider.

The amendment to §343.346 includes only minor, non-substantive changes.

The amendment to §343.348 clarifies that if a juvenile supervision officer is providing continuous supervision of a resident classified as a high suicide risk, the officer must not be simultaneously responsible for the operation of a control room. The rule also adds a requirement that documentation must include the times during which each juvenile supervision officer provided continuous visual supervision.

The amendment to §343.350 clarifies that *any time a moderate-risk resident is not in the constant physical presence of a juvenile supervision officer* (rather than just when a resident is in individual sleeping quarters), the supervision requirements in this rule apply. The rule also clarifies that if a juvenile supervision officer is supervising a moderate-risk resident, the officer must not be simultaneously responsible for the operation of a control room. The amended rule also requires the facility to keep documentation of a resident's reclassification between risk levels in the resident's file.

New §343.351 requires the facility to maintain a log showing when residents are classified and removed from classification as high or moderate risk for suicidal behavior.

The amendment to §343.352 adds a requirement for the visitor log to document the date and time of each visit.

The amendment to §343.354 includes only minor, non-substantive changes.

The amendment to §343.356 clarifies the meaning of confidential contact with an attorney or a representative of an attorney.

The amendment to §343.358 requires facilities to document phone call opportunities provided to residents and any restrictions on telephone usage. The rule also requires the facility

to have policies and procedures regarding reasonable and fair telephone access. The amendment also clarifies that parents must be notified of the telephone policy, but not necessarily be provided a copy of it.

The amendment to §343.360 adds an option allowing the facility to return mail to the sender if the resident has been released or transferred.

The amendment to §343.362 specifies that facility rules may prohibit or limit residents' correspondence with other residents, witnesses or parties in investigations, participants in active court proceedings, and victims.

The amendments to §343.364 and §343.372 include only minor, non-substantive changes.

The amendment to §343.374 adds an option for the juvenile board to issue written authorization for a board member or staff member to approve research studies on behalf of the board. The rule also adds a requirement for facilities to make research study results available to TJJD upon completion of the study, rather than upon request by TJJD.

The amendment to §343.376 adds several specific provisions that must be included in the facility's grievance process.

The amendment to §343.378 requires the facility to respond to grievance appeals within 10 calendar days (pre-adjudication facilities) or 30 calendar days (post-adjudication facilities).

The amendment to §343.380 adds a requirement for the grievance officer or designee to collect grievances seven days per week.

The amendment to §343.382 includes only minor, non-substantive changes.

The amendment to §343.384 prohibits issuing discipline to a resident for refusing to participate in religious services. The rule also adds a requirement for facilities to ensure that residents who refuse to participate in religious services are offered alternate programming or activities or are allowed to stay in their rooms/cells.

The amendment to §343.386 requires the facility's policies regarding the volunteer or internship program to include the purposes and goals of the program and a prohibition on volunteers or interns with certain criminal histories from having unsupervised contact with residents. The amended rule also clarifies that volunteer/intern policies are not required to address individuals who perform volunteer services once per year and who have only supervised contact with residents.

The amendment to §343.400 clarifies that the requirement to supervise a juvenile until the admission/release decision is made allows for supervising from behind an architectural barrier only if the barrier allows for an unobstructed view of the area where the resident is held (excluding restrooms).

The amendment to §343.402 clarifies that assessment isolation may only be used after the juvenile has been admitted. The amended rule also requires the facility's policies and procedures to prohibit the automatic isolation of residents.

The amendment to §343.404 removes references to the *standard screening instrument* and allows for the facility to use any screening instrument approved by TJJD or a clinical assessment by a mental health provider. The amended rule also requires a person who administers the screening instrument to be trained by TJJD staff or by a person who was trained by TJJD staff. The rule clarifies that the requirement to conduct a mental health screening or assessment applies even if the youth is released from detention before the 48th hour after admission. An additional clarification shows that if the mental health screening also serves as the suicide screening, the mental health screening must be completed within two hours after admission (as required by §343.340), not 48 hours. The rule also requires the person who administered the screening instrument to legibly document on the instrument his/her name and the time and date the screening was completed.

The amendment to §343.406 specifies that the health screening may only be conducted by a licensed vocational nurse, registered nurse, nurse practitioner, physician assistant, physician, qualified person acting under delegation from a physician, or person trained by one of the preceding individuals. The amendment specifies the topics that must be covered in the training on the screening instrument and revises the list of items that must be addressed on the screening instrument. The rule requires the screening instrument to be approved by a registered nurse, nurse practitioner, physician assistant, or physician. The amended rule also requires facility staff to contact a health care professional within 24 hours if a youth reports taking prescription medication and his/her parent or guardian has not provided the facility with the medication. The rule requires the facility to implement policies to ensure youth with identified medical problems are appropriately supervised until medical follow up occurs. The rule also clarifies that the screening form must not contain any blank fields.

New §343.407 removes the option of waiving the health assessment for a resident if he/she had received one within the past year. All residents must receive a health assessment within 30 days after admission.

The amendment to §343.410 includes only minor, non-substantive changes.

The amendment to §343.412 allows for the verbal orientation to begin up to six hours before admission. The amendment also requires the orientation to include age-appropriate information about the facility's zero-tolerance policy regarding sexual abuse and sexual harassment and deletes the reference to the Prison Rape Elimination Act as the source of this requirement. The amended rule allows the facility to post orientation materials in an accessible location rather than provide each resident with written orientation materials.

The amendment to §343.414 adds a list of items to be considered in the behavioral screening. The rule also requires the admission form to contain the date the behavioral screening was done and a written acknowledgment that items in this standard, if the information is available, were considered when making the housing assignment.

The amendment to §343.416 clarifies that the housing plan must be written and that disabilities are an example of the special considerations that should be included in the plan.

The amendments to §343.418 and §343.420 include only minor, non-substantive changes.

The amendment to §343.422 clarifies that a copy of a detention order or adjudication and disposition order is considered an acceptable substitute for the offense narrative in cases where a resident is being detained pending a transfer action.

The amendment to §343.424 requires the daily chronological log to be signed or initialed by the officer(s) supervising the residents or, if it is electronic, to identify the officer making the entry.

The amendment to §343.426 requires the officer to document the release authorization if a judge or juvenile probation officer authorizes a resident's release by phone.

The amendment to §343.428 removes the requirement for juvenile supervision officers who are not yet certified to pass the TJJD competency exam before providing resident supervision. The rule also specifies that juvenile supervision officers who are not certified and who have not met minimum training requirements may not perform any duties of a juvenile supervision officer or be counted in any officer-to-resident ratios.

The amendment to §343.432 removes pat-down searches from the list of activities that require juvenile supervision officers of the same gender as the resident to be the sole supervisors.

The amendment to §343.434 clarifies that a juvenile supervision officer must be present on the facility premises at all times to be counted in the facility-wide ratio.

New §343.435 contains the information that was previously in §343.444 relating to officer-to-resident ratios for on-premises activities that occur outside housing units.

The amendments to §343.438 and §343.440 include only minor, non-substantive changes.

The amendment to §343.442 requires a juvenile supervision officer to be physically located in the unit (rather than provide constant visual observation) while residents are in the unit. The rule also clarifies that the clause exempting units designed and operated before June 5, 2001, applies to the whole rule, not just subsection (a).

The amendment to §343.444 narrows the rule to apply to cases where the resident leaves the facility *while in the custody of facility staff*. Since the rule no longer applies to cases where a juvenile probation officer takes a resident off premises, the requirement for the officer to be certified in CPR and first aid has been deleted. The amendment also moves supervision requirements for activities that occur on premises but outside a housing unit to new §343.435.

The amendment to §343.446 increases the upper limit from 8 to 12 for the number of residents that may be in a therapeutic group without having a juvenile supervision officer in the room.

The amendment to §343.448 clarifies that a facility with more than one control room must specify which one is primary. The rule also clarifies that juvenile supervision officers assigned to a secondary control room may be counted in the facility-wide ratio and, during non-program hours, in a housing unit supervision ratio. The amended rule also clarifies that staff members assigned to primary control rooms are not required to be certified juvenile supervision officers.

The amendment to §343.450 includes only minor, non-substantive changes.

The amendment to §343.452 clarifies that ceiling height must be measured from the lowest point of the ceiling.

The amendment to §343.454 clarifies that one shower control producing warm water is an acceptable substitute for having hot and cold water. The amendment also clarifies that showers with multiple shower heads are counted toward the shower-to-bed ratio.

The amendment to §343.456 makes only minor, non-substantive changes.

The amendment to §343.458 clarifies that one washbasin control producing warm water is an acceptable substitute for having hot and cold water. The amendment also requires the design of the housing unit to allow for access to a washbasin without leaving the housing unit.

The amendment to §343.460 includes only minor, non-substantive changes.

New §343.461 creates a stand-alone rule for the clause that exempts multiple-occupancy housing units designed and operated before June 5, 2001, from ten sections in this subchapter. This clause was previously found in §343.472.

The amendment to §343.462 includes only minor, non-substantive changes.

The amendment to §343.464 adds that approval from the facility administrator or designee to place a youth in a multiple-occupancy housing unit must be in writing and must contain the date and time the placement was authorized and the date and time the resident was placed in the unit.

The amendments to §343.468 and §343.470 include only minor, non-substantive changes.

The amendment to §343.472 moves to new §343.461 the clause exempting multiple-occupancy housing units designed and operated before June 5, 2001, from ten sections in this subchapter.

The amendment to §343.474 clarifies that ceiling height must be measured from the lowest point of the ceiling.

The amendment to §343.476 clarifies that one shower control producing warm water is an acceptable substitute for having hot and cold water. The amendment also clarifies that showers with multiple shower heads are counted toward the shower-to-bed ratio.

The amendment to §343.478 adds an option for up to one-half of required toilets in male housing units to be substituted by urinals.

The amendment to §343.480 clarifies that one washbasin control producing warm water is an acceptable substitute for having hot and cold water.

The amendment to §343.482 includes only minor, non-substantive changes.

The amendment to §343.484 clarifies that the required 100 square feet of floor space per resident in the total common activity areas is calculated using the facility's design capacity.

The amendment to §343.486 specifies that time a resident spends in individual resident sleeping quarters does not count toward the 10-hour minimum for program hours. The amendment also clarifies that the facility must document any deviation or modification from the program schedule only when it results in the cancellation of an activity or a deviation of one hour or more.

The amendment to §343.488 moves the requirement to provide TEA-compliant coursework to this rule from §343.489.

The repeal of §343.489 allows for the content of this rule to be consolidated with §343.488.

The amendment to §343.490 adds a requirement for the education service provider to provide a full educational day, which

must be at least seven hours long and consist of at least five and one-half hours of secondary curriculum.

The amendment to §343.491 includes only minor, non-substantive changes.

The amendment to §343.493 clarifies that substitute education staff members are required to receive a facility orientation before starting educational duties only if they have a known assignment at the facility of five consecutive school days or longer. The rule also requires the facility to document the orientation of educational staff members.

The amendment to §343.498 clarifies that the recreational equipment and supplies provided to residents must be in working order. The amendment also adds a requirement that large muscle exercise must take place outside sleeping rooms. The rule also clarifies that offering physical recreation meets the requirements of this rule, regardless of whether the residents choose to participate.

The amendment to §343.600 requires the referring agency to provide official documentation of the juvenile's date and place of birth, which is not necessarily a copy of the birth certificate. The amended rule specifies that the medical exam must be conducted by a nurse practitioner, a physician assistant, or a physician. With some exceptions, the rule now requires the medical exam to be completed within the last 90 days (rather than 30 days). However, the medical exam may be up to 180 days old if the transfer is intra-jurisdictional, if the medical examination was performed at the pre-adjudication facility, and if the resident did not leave the custody of the pre-adjudication facility after the exam was conducted. The amendment also requires dental exams to be completed within the last 180 days (rather than 30 days). The rule also adds an option for the referring agency to provide a psychiatric evaluation, including a diagnostic impression, instead of a psychological evaluation or behavioral health assessment.

The amendment to §343.602 includes only minor, non-substantive changes.

The amendment to §343.604 specifies that the health screening may only be conducted by a licensed vocational nurse, registered nurse, nurse practitioner, physician assistant, physician, a qualified person acting under delegation from a physician, or a person trained by one of the preceding individuals. The amendment specifies the topics that must be covered in the training on the screening instrument and revises the list of items that must be addressed on the screening instrument. The rule requires the screening instrument to be approved by a registered nurse, nurse practitioner, physician assistant, or physician. The amended rule also requires facility staff to contact a health care professional within 24 hours if a youth reports taking prescription medication and his/her parent or guardian has not provided the facility with the medication. The rule requires the facility to implement policies to ensure youth with identified medical problems are appropriately supervised until medical follow up occurs. The rule also clarifies that the screening form must not contain any blank fields.

The amendment to §343.606 requires the orientation to include age-appropriate information about the facility's zero-tolerance policy regarding sexual abuse and sexual harassment and deletes the reference to the Prison Rape Elimination Act as the source of this requirement. The amended rule allows the facility to post orientation materials in an accessible location rather than provide each resident with written orientation materials.

The amendment to §343.608 clarifies that the housing plan must be written.

The amendments to §343.612 and §343.614 include only minor, non-substantive changes.

The amendment to §343.616 clarifies that progress reports must include the resident's case plan and case plan review.

The amendment to §343.618 requires the daily chronological log to be signed or initialed by the officer(s) supervising the residents or, if it is electronic, to identify the officer making the entry.

The amendment to §343.620 requires the officer to document the release authorization if a judge or juvenile probation officer authorizes a resident's release by phone.

The amendment to §343.622 removes the requirement for juvenile supervision officers who are not yet certified to pass the TJJD competency exam before providing resident supervision. The rule also specifies that juvenile supervision officers who are not certified and who have not met minimum training requirements may not perform any duties of a juvenile supervision officer or be counted in any officer-to-resident ratios.

The amendment to §343.626 removes pat-down searches from the list of activities that require juvenile supervision officers of the same gender as the resident to be the sole supervisors.

The amendment to §343.628 clarifies that a juvenile supervision officer must be present on the facility premises at all times to be counted in the facility-wide ratio.

New §343.629 now contains the information from §343.636 relating to officer-to-resident ratios for on-premises activities that occur outside housing units.

The amendments to §343.630 and §343.632 include only minor, non-substantive changes.

The amendment to §343.634 requires residents to be in the constant physical presence of a juvenile supervision officer (rather than under constant visual observation) while residents are in the unit.

The amendment to §343.636 narrows the rule to apply to cases where the resident leaves the facility *while in the custody of facility staff*. The amendment also moves supervision requirements for activities that occur on premises but outside a housing unit to new §343.629.

The amendment to §343.638 increases the upper limit from 8 to 12 for the number of residents that may be in a therapeutic group without having a juvenile supervision officer in the room.

The amendment to §343.640 clarifies that a facility with more than one control room must specify which one is primary. The rule also clarifies that juvenile supervision officers assigned to a secondary control room may be counted in the facility-wide ratio and, during non-program hours, in a housing unit supervision ratio. The amended rule also clarifies that staff members assigned to primary control rooms are not required to be certified juvenile supervision officers.

The amendment to §343.642 includes only minor, non-substantive changes.

The amendment to §343.644 clarifies that the ceiling height must be measured from the lowest point of the ceiling.

The amendment to §343.646 clarifies that one shower control producing warm water is an acceptable substitute for having hot

and cold water. The amendment also clarifies that showers with multiple shower heads are counted toward the shower-to-bed ratio.

The amendment to §343.648 includes only minor, non-substantive changes.

The amendment to §343.650 clarifies that one washbasin control producing warm water is an acceptable substitute for having hot and cold water. The amendment also requires the design of the housing unit to allow for access to a washbasin without leaving the housing unit.

The amendments to §343.652 and §343.654 include only minor, non-substantive changes.

The amendment to §343.656 clarifies that the ceiling height must be measured from the lowest point of the ceiling.

The amendment to §343.658 clarifies that one shower control producing warm water is an acceptable substitute for having hot and cold water. The amendment also clarifies that showers with multiple shower heads are counted toward the shower-to-bed ratio.

The amendment to §343.660 includes only minor, non-substantive changes.

The amendment to §343.662 clarifies that one washbasin control producing warm water is an acceptable substitute for having hot and cold water.

The amendments to §343.664 and §343.666 include only minor, non-substantive changes.

The amendment to §343.668 specifies that time a resident spends in individual resident sleeping quarters does not count toward the 10-hour minimum for program hours. The amendment also clarifies that the facility must document any deviation or modification from the program schedule only when it results in the cancellation of an activity or a deviation of one hour or more.

The amendment to §343.670 moves the requirement to provide TEA-compliant coursework to this rule from §343.671.

The repeal of §343.671 allows for the content of this rule to be consolidated with §343.670.

The amendment to §343.672 adds a requirement for the education service provider to provide a full educational day, which must be at least seven hours long and consist of at least five and one-half hours of secondary curriculum.

The amendment to §343.675 clarifies that substitute education staff members are required to receive a facility orientation before starting educational duties only if they have a known assignment at the facility of five consecutive school days or longer. The rule also requires the facility to document the orientation of educational staff members.

The amendment to §343.677 includes only minor, non-substantive changes.

The amendment to §343.680 clarifies that the recreational equipment and supplies provided to residents must be in working order. The amendment also adds a requirement that large muscle exercise must take place outside sleeping rooms. The rule also clarifies that offering physical recreation meets the requirements of this rule, regardless of whether the residents choose to participate.

The amendment to §343.688 requires facility staff to document in the case plan if the parent, guardian, or custodian refuses to sign the case plan or if he/she cannot be located.

The amendment to §343.690 requires facility staff to document in the case plan if the parent, guardian, or custodian refuses to sign the case plan review or if he/she cannot be located.

The amendment to §343.700 includes only minor, non-substantive changes.

The amendment to §343.702 adds a clause exempting facilities that began operating a physical training program before January 1, 2010, from the requirements of this rule. The amended rule also clarifies that the written authorization from the facility's governing board to operate the program must be separate from the board's annual certification of the facility and retained as long as the program remains operational.

The amendment to §343.704 requires the psychological evaluation or behavioral health assessment to indicate whether there are any therapeutic contraindications to placing the resident in the physical training program. The rule no longer requires the psychological evaluation or behavioral health assessment to indicate the appropriateness of placing the child in the program. The amendment also requires the facility to retain the documentation listed in the rule.

The amendment to §343.706 includes only minor, non-substantive changes.

The amendment to §343.708 requires the facility to document that a physician has determined the resident is fit to return to the program after an injury or illness. The rule no longer requires the facility to obtain a release with this information that is signed by a physician. The amended rule also requires the facility to maintain a log of residents who stop participating in the program for medical reasons, including the date the resident was deemed unfit to participate and the date the resident resumed participation.

The amendment to §343.710 prohibits using physical exercise for intimidation and using disciplinary sanctions that cause bodily duress.

The amendment to §343.712 requires the facility to retain the results of the resident's physical fitness screening and the evaluation of the screening results.

The amendment to §343.800 moves the requirement for personal restraint techniques to be approved by TJJD to §343.808. The phrase "or to modify an individual's behavior" has been removed from the definition of restraint. The amended rule also clarifies that plastic cuffs must be designed specifically for human restraint.

The amendment to §343.802 clarifies that imminence is a required element for all three justifications for using restraints, not just the first justification in the list.

The amendment to §343.804 includes only minor, non-substantive changes.

The amendment to §343.806 requires that documentation of a restraint must include a narrative description of the event from each staff member who participated in the restraint. The amended rule also requires the facility to maintain a restraint log that includes the name of the resident, the type of restraint, the name of the staff member(s), and date and time the restraint began and ended.

The amendment to §343.808 moves the requirement that personal restraint techniques must be approved by TJJD from §343.800 to this rule. The amended rule also requires juvenile supervision officers and juvenile probation officers to be retrained in the personal restraint technique in accordance with the time frames required by the particular technique if that time frame is more frequent than once every year.

The amendment to §343.810 requires the facility to document the dates of inspections of mechanical restraint devices. The rule also requires the facility to ensure that all maintenance performed on mechanical restraint equipment adheres to the manufacturer's guidelines. The amendment also clarifies that restraint beds and restraint chairs may be repaired in a way that alters them from the manufacturer's design, but only if the manufacturer approves the repair in writing and the modified equipment still complies with TJJD rules.

The amendment to §343.812 clarifies that the three-hour time limit for placing a resident in a non-ambulatory restraint includes all cumulative time spent in the restraint during a 24-hour period. The rule also allows a juvenile probation officer to provide supervision of a resident in a non-ambulatory mechanical restraint. The amendment clarifies that the constant visual supervision required by this rule can be from behind an architectural barrier as long as the constant visual supervision is not interrupted or impeded. The amended rule also requires the facility to document any instance in which the resident's aggressive behavior prevents staff from providing any of the required services while the resident is in the restraint.

The amendment to §343.818 includes only minor, non-substantive changes.

SUMMARY OF PUBLIC COMMENTS

TJJD received comments from the following organizations regarding the proposed rule changes: American Civil Liberties Union - Texas, Disability Rights Texas, Hogg Foundation for Mental Health, Texans Care for Children, Texas Appleseed, Texas Criminal Justice Coalition, Texas Academy of Physician Assistants, and Travis County Juvenile Probation Department. A summary of the comments and TJJD's responses will follow.

Comment: Section 343.260(b)(4)(A) should be amended to allow physician assistants, and not just physicians, to conduct anal or genital body cavity searches. Texas law clearly places these health care services within physician assistants' scope of practice.

Response: Section 343.260(b)(4)(A) has been amended as suggested.

Comment: To ensure seclusion is not being used when unwarranted or in a disproportionate manner, §343.285 should be expanded to include the collection of the following information: the infraction for which a youth was secluded for disciplinary reasons, with a distinction as to whether that infraction is categorized by a local department as major or minor; the race/ethnicity of the youth being secluded; the gender of the youth being secluded; and the sexual orientation of the youth being secluded.

Response: New §343.285 requires each facility to maintain a log with very basic information about each youth placed in seclusion. The purpose of this log is not to drive the data collection process at local departments or at TJJD. It is primarily an audit tool used to verify the identity of residents placed in seclusion. All of the additional information listed in the comment is currently collected by local departments through other processes and is available as needed.

Comment: In §343.414, use of the phrase "if readily available" in subsection (b) is inconsistent with the language in subsection (c) that requires a written acknowledgment that the items listed in subsection (b) were considered.

Response: Clarification has been added to subsection (c) to indicate that only "available" items listed in subsection (b) must be considered.

Comment: To prevent the isolation of youth who identify on the LGBQT spectrum solely because such youth are wrongly perceived to be at higher risk of acting out sexually, §343.414 should categorize the factors based on those that may indicate vulnerabilities and those that may indicate future acts of violence. Furthermore, to the extent possible, TJJD should ensure that the factors being taken into consideration for "tendencies of acting out" are in line with research-based factors associated with high risks of violently acting out in a secure juvenile setting (e.g., negative attitudes, risk taking/impulsivity, anger management problems, prosocial involvement, strong social support, resilient personality).

Response: Section 343.414 does not allow the isolation or seclusion of any resident. The purpose of this section is to provide guidelines on how to assign residents to regular housing placements. Separate rules govern the placement of residents in isolation and seclusion. TJJD believes the existing rules adequately prohibit the practices described in the comment. Specifically, §343.368, prohibits discrimination based on sexual orientation. Section 343.290 establishes clear parameters on the reasons a resident may be placed in protective isolation, which do not include the perception that a resident is at higher risk of acting out sexually. Rules governing seclusion, such as §343.288, are also clear that the potential for acting out sexually is not an acceptable reason for secluding a youth.

Comment: If the term "special needs" is being used in §343.416 to identify youth with disabilities, the language should be amended to specifically reflect that.

Response: Clarification has been added to paragraph (5) to indicate that disabilities are an example of the special considerations that should be reflected in the classification plan.

Comment: In §343.690, the time period for reassessments of the treatment plan should be revised to allow multiple reassessments as opposed to only one. Given that the average length of stay in most post-adjudication facilities is 125 days, the "no later than 90 calendar days" requirement makes it difficult to conduct periodic reassessments of a youth's treatment plan.

Response: The case plan is intended to be a goal-driven document. Residents need time to reach those goals, and staff need time to evaluate the youth's progress and compliance. TJJD believes the requirement to complete a reassessment at least once every 90 days is sufficient for this purpose and is consistent with regulations governing other residential placements, such as 40 TAC §748.1381. Additionally, nothing in the rule prevents a facility from conducting more frequent case plan updates.

Comment: In §343.800, concerning the definition of restraint in paragraph (10), the phrase "or to modify the individual's behavior" should be struck. Restraint is not a behavior modification or disciplinary technique, but an intervention in the event of a serious and imminent behavioral emergency.

Response: Paragraph (10) has been amended and no longer includes the phrase "or to modify the individual's behavior." Section 343.800 is not intended to govern the justification for using restraints, which is addressed in §343.802.

Comment: In §343.802, subsections (d)(2) and (3) should be modified to also require an imminent act.

Response: To remain consistent with subsection (d)(1), which allows the use of restraints to prevent imminent injury to self or others, subsections (d)(2) and (3) have been amended to reflect that restraints may be used only to prevent imminent serious property damage or imminent escape.

Comment: The language in §343.804 paragraphs (4) and (5) that prohibits prone and supine restraints when there is sustained or excessive pressure on the back, chest, torso, or pressure on the neck or head, should be amended to completely eliminate these dangerous practices due to the real risk of asphyxia when prone and supine holds are used. SB 325 (79th Texas Legislature) set forth minimum standards for the use of restraint and seclusion in various settings. Among other limitations, prone and supine holds were limited to transitional holds. SB 325 also called for a workgroup to recommend best practices in policy, training, safety, and risk management for the Texas Youth Commission, the Texas Juvenile Probation Commission, and various health and human service agencies. However, best practices surrounding the use of prone and supine restraints are not reflected in the proposed rule. TJJD should look to 40 TAC §415.255(b) for possible language that would help minimize the risk to youth associated with prone and supine holds.

Response: The language in paragraphs (4) and (5) was developed several years ago in response to the recommendations of the SB 325 workgroup. As noted, the rule prohibits any sustained or excessive pressure on the back, chest, or torso when a resident is in a prone or supine position. The rule also prohibits any pressure on the head or neck when a resident is in a prone or supine position. TJJD believes these prohibitions are consistent with the bill's intent to limit prone and supine holds to transitional holds and with the recommendations of the SB 325 workgroup.

Comment: Section 343.806 should clarify who is responsible for the documentation of the restraint incident if multiple staff are involved.

Response: The intent of the rule is not to direct who is responsible for collecting each piece of information. TJJD believes that as long as all required information is documented, each facility should have the discretion to write its policies and procedures to best accommodate local staffing arrangements and other facility considerations.

Comment: We support proposed §343.806(b), which requires the facility to maintain a restraint log.

Response: TJJD appreciates the comment.

Comment: Concerning Subchapter (E), there are no time limits in the current or proposed text for personal and mechanical restraints, with the exception of non-ambulatory mechanical restraints. Time limits protect against the physical harm associated with immobility. Provisions could be developed to authorize the continued use of the intervention following an evaluation or transition to disciplinary seclusion if the emergency continues, but these circumstances should be the rare exception. TJJD should adopt maximum time limits for personal and mechanical restraints and should look to 40 TAC §415.261 for examples of time limits that are consistent with or exceed nationally recognized standards.

Response: TJJD agrees that prolonged use of personal and mechanical restraints is inappropriate. However, TJJD believes the limitations in §343.802 are sufficient. That section allows the use of restraints only to prevent imminent acts. Once the imminent threat is no longer present, restraints are no longer justified.

Comment: The proposed changes in §343.418 and §343.612 would impact data collection and reporting processes at the local level. The sections require intake staff to enter "unknown," "not applicable," or a line if any of the required information is unknown at the time of the resident's admission. If this requirement is applied to a case management information system such as CASEWORKER or JCMS, new and potentially incorrect information would be created. For example, system-generated reports would include large numbers of juveniles with the exact same alias or middle name, such as John "not applicable" Smith, or John Smith, aka "not applicable." A possible solution would involve a programming change that would allow for a yes/no response to the question "Does the juvenile have an alias?"

Response: TJJD agrees this practice may lead to unnecessary data. The proposed text of §343.418 and §343.612 has been amended to eliminate the requirement to enter "unknown," "not applicable," or a line in the space or electronic field provided for items that are unknown at the time of admission.

RULE REVIEW

In the Proposed Rules section of the June 27, 2014, issue of the *Texas Register* (39 TexReg 4892), TJJD published its notice of intent to review Chapter 343 as required by Texas Government Code §2001.039.

TJJD has concluded the rule review and has determined that the following four rules should be repealed: §§343.106, 343.304, 343.489, and 343.671. Accordingly, these rules have been repealed as described earlier in this notice.

TJJD has also determined that the reasons for adopting all remaining rules in this chapter continue to exist. Accordingly, §§343.100, 343.102, 343.104, 343.200, 343.202, 343.204, 343.206, 343.208, 343.210, 343.212, 343.214, 343.218, 343.220, 343.222, 343.224, 343.226, 343.230, 343.232, 343.236, 343.238, 343.240, 343.242, 343.244, 343.246, 343.248, 343.249, 343.250, 343.260, 343.262, 343.264, 343.266, 343.270, 343.272, 343.274, 343.300, 343.302, 343.306, 343.308, 343.310, 343.312, 343.314, 343.316, 343.320, 343.322, 343.324, 343.328, 343.330, 343.332, 343.336, 343.338, 343.340, 343.342, 343.346, 343.348, 343.350, 343.352, 343.354, 343.356, 343.358, 343.360, 343.362, 343.364, 343.372, 343.374, 343.376, 343.378, 343.380, 343.382, 343.384, 343.386, 343.400, 343.402, 343.404, 343.406, 343.410, 343.412, 343.414, 343.416, 343.418, 343.420, 343.422, 343.424, 343.426, 343.428, 343.432, 343.434, 343.438, 343.440, 343.442, 343.444, 343.446, 343.448, 343.450, 343.452, 343.454, 343.456, 343.458, 343.460, 343.462, 343.464, 343.468, 343.470, 343.472, 343.474, 343.476, 343.478, 343.480, 343.482, 343.484, 343.486, 343.488, 343.490, 343.491, 343.493, 343.498, 343.600, 343.602, 343.604, 343.606, 343.608, 343.612, 343.614, 343.616, 343.618, 343.620, 343.622, 343.626, 343.628, 343.630, 343.632, 343.634, 343.636, 343.638, 343.640, 343.642, 343.644, 343.646, 343.648, 343.650, 343.652, 343.654, 343.656, 343.658, 343.660, 343.662, 343.664, 343.666, 343.668, 343.670, 343.672,

343.675, 343.677, 343.680, 343.688, 343.690, 343.700, 343.702, 343.704, 343.706, 343.708, 343.710, 343.712, 343.800, 343.802, 343.804, 343.806, 343.808, 343.810, 343.812, and 343.818, are readopted with amendments as described in this notice.

Sections 343.228, 343.234, 343.268, 343.276, 343.278, 343.280, 343.282, 343.286, 343.288, 343.290, 343.326, 343.334, 343.366, 343.368, 343.370, 343.408, 343.430, 343.436, 343.492, 343.494, 343.496, 343.610, 343.624, 343.673, 343.674, 343.676, 343.678, 343.686, and 343.816 are readopted without amendments.

SUBCHAPTER A. DEFINITIONS, APPLICABILITY, AND GENERAL DOCUMENTATION REQUIREMENTS

37 TAC §§343.100, 343.102, 343.104, 343.108, 343.110

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

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 November 4, 2014.

TRD-201405260
Karen Kennedy
Interim General Counsel
Texas Juvenile Justice Department
Effective date: January 1, 2015
Proposal publication date: June 27, 2014
For further information, please call: (512) 490-7014

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SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §343.106

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

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 November 4, 2014.

TRD-201405258
Karen Kennedy
Interim General Counsel
Texas Juvenile Justice Department
Effective date: January 1, 2015
Proposal publication date: June 27, 2014
For further information, please call: (512) 490-7014

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SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §§343.200, 343.202, 343.204, 343.206, 343.208, 343.210, 343.212, 343.214, 343.218, 343.220, 343.222, 343.224, 343.226, 343.230, 343.232, 343.236, 343.238, 343.240, 343.242, 343.244, 343.246, 343.248 - 343.250, 343.260, 343.262, 343.264, 343.266, 343.270, 343.272, 343.274, 343.284, 343.285, 343.300, 343.302, 343.306, 343.308, 343.310, 343.312, 343.314, 343.316, 343.320, 343.322, 343.324, 343.328, 343.330, 343.332, 343.336, 343.338, 343.340, 343.342, 343.346. 343.348, 343.350 - 343.352, 343.354, 343.356, 343.358, 343.360, 343.362, 343.364, 343.372, 343.374, 343.376, 343.378, 343.380, 343.382, 343.384, 343.386

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

No other statute, code, or article is affected by this proposal.

§343.260. Resident Searches.

(a) The facility shall have written policies and procedures regulating the search of juveniles being admitted into the facility and residents already within the facility's population.

(b) Residents shall be subjected only to the following searches:

(1) a pat-down search, conducted by same-gender staff, as necessary for facility safety and security;

(2) an oral cavity search to prevent concealment of contraband and to ensure the proper administration of medication;

(3) a strip search based on the reasonable belief that the resident is in possession of contraband or reasonable belief that the resident presents a threat to the facility's safety and security;

(A) a strip search shall be limited to a visual observation of the resident and shall not involve the physical touching of a resident;

(B) a strip search shall be performed in an area that ensures the privacy and dignity of the resident; and

(C) a strip search shall be conducted by a staff member of the same gender as the resident being searched; and

(4) an anal or genital body cavity search only if there is probable cause to believe the resident is concealing contraband;

(A) an anal or genital body cavity search shall be conducted only by a physician or physician assistant. The physician or physician assistant shall be of the same gender as the resident, if available;

(B) all anal and genital body cavity searches shall be conducted in an office or room designated for medical procedures; and

(C) all anal and genital body cavity searches shall be documented and the documentation shall be maintained in the resident's file.

(c) Staff members conducting searches shall:

(1) not touch residents any more than is necessary to conduct a comprehensive search;

(2) make every effort to prevent embarrassment or humiliation of resident;

(3) refrain from excessively forceful touching, prodding, or probing that may cause pain or injury;

(4) refrain from search techniques that may resemble fondling, especially in the area of the resident's breasts, genitalia, and buttocks; and

(5) conduct themselves in a professional manner and refrain from making inappropriate remarks or comments about the search process, the resident being searched, or the resident's body or physical appearance. Staff members' communications during the search shall be limited to the verbal instructions and requests necessary to conduct an effective and efficient search and to provide for resident, staff, and facility safety.

(d) Probable cause for an anal or genital body cavity search shall be documented. This documentation shall include:

(1) name of the resident searched;

(2) date and time of the search;

(3) probable cause justifying the search;

(4) name and title of the physician conducting search; and

(5) contraband found, if applicable.

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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Karen Kennedy
Interim General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7014

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37 TAC §343.304

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

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 C. SECURE PRE-ADJUDICATION DETENTION FACILITY STANDARDS

37 TAC §§343.400, 343.402, 343.404, 343.406, 343.407, 343.410, 343.412, 343.414, 343.416, 343.418, 343.420, 343.422, 343.424, 343.426, 343.428, 343.432, 343.434, 343.435, 343.438, 343.440, 343.442, 343.444, 343.446, 343.448, 343.450, 343.452, 343.454, 343.456, 343.458, 343.460 - 343.462, 343.464, 343.468, 343.470, 343.472, 343.474, 343.476, 343.478, 343.480, 343.482, 343.484, 343.486, 343.488, 343.490, 343.491, 343.493, 343.498

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

§343.414. Behavioral Screening.

(a) Prior to placing a resident into a housing unit, the resident shall be screened for potential vulnerabilities or tendencies of acting out with sexually aggressive or assaultive behavior. Housing assignments shall be made accordingly.

(b) The behavioral screening shall take into consideration the following information, if readily available:

(1) age;

(2) current charge(s) and offense history;

(3) physical size/stature;

(4) current state of mind;

(5) sexual orientation;

(6) prior sexual victimization or abuse;

(7) level of emotional and cognitive development;

(8) mental or physical disabilities;

(9) intellectual or developmental disabilities; and

(10) any other pertinent information.

(c) The facility shall maintain documentation that shows the date the behavioral screening was completed and a written acknowledgement that available items listed in subsection (b) of this section were considered in making a housing assignment.

§343.416. Classification Plan.

All facilities with more than one housing unit shall have a written classification plan that attempts to safely house residents based on at least the following factors:

(1) age;

(2) sex;

(3) offense;

(4) behavior; and

(5) any other special considerations, such as potential vulnerabilities for sexual abuse, gang affiliation, referral history, disabilities, and/or other special needs.

§343.418. Admission Records.

The facility shall have the following information, which shall be obtained at the time the resident is admitted into the facility:

(1) date and time of entry;

(2) date and time of admission;

(3) name;

(4) nicknames and aliases;

(5) social security number;

(6) current address;

(7) detention criteria as required by §53.02(b) of the Texas Family Code;

(8) referring offense;

(9) name of attorney;

(10) name, title, and signature of delivering individual;

(11) sex;

(12) race;

(13) date of birth;

(14) place of birth;

(15) citizenship;

(16) current education level;

(17) last school attended;

(18) name, relationship, address, and phone number of the resident's parents, legal guardians, or custodians; and

(19) primary language of the resident and the resident's parent, legal guardian, or custodian.

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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37 TAC §343.489

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

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SUBCHAPTER D. SECURE POST-ADJUDICATION CORRECTIONAL FACILITY STANDARDS

37 TAC §§343.600, 343.602, 343.604, 343.606, 343.608, 343.612, 343.614, 343.616, 343.618, 343.620, 343.622, 343.626, 343.628 - 343.630, 343.632, 343.634, 343.636, 343.638, 343.640, 343.642, 343.644, 343.646, 343.648, 343.650, 343.652, 343.654, 343.656, 343.658, 343.660, 343.662, 343.664, 343.666, 343.668, 343.670, 343.672, 343.675, 343.677, 343.680, 343.688, 343.690, 343.700, 343.702, 343.704, 343.706, 343.708, 343.710, 343.712

STATUTORY AUTHORITY

The amended and new sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

§343.612. Admission Records.

The facility shall obtain and record the following information at the time the resident is admitted into the facility:

(1) date and time of admission;

(2) name;

(3) nicknames and aliases;

(4) social security number;

(5) last known address;

(6) adjudicated offense;

(7) name of attorney;

(8) name, title, and signature of delivering individual;

(9) sex;

(10) race;

(11) date of birth;

(12) citizenship;

(13) place of birth;

(14) name, relationship, address, and phone number of the resident's parents, legal guardians, or custodians; and

(15) primary language of the resident and the resident's parent, legal guardian, or custodian.

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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37 TAC §343.671

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

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SUBCHAPTER E. RESTRAINTS

37 TAC §§343.800, 343.802, 343.804, 343.806, 343.808, 343.810, 343.812, 343.818

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §221.002, which requires TJJD to adopt reasonable rules that provide minimum standards for public and private juvenile pre-adjudication secure detention facilities and post-adjudication secure correctional facilities.

§343.800. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless otherwise expressly defined within the chapter.

(1) Approved Personal Restraint Technique--A professionally trained, curriculum-based, and competency-based restraint technique that uses a person's physical exertion to completely or partially constrain another person's body movement without the use of mechanical restraints.

(2) Approved Mechanical Restraint Devices--A professionally manufactured and commercially available mechanical device designed to aid in the restriction of a person's bodily movement. TJJD-approved mechanical restraint devices are limited to the following:

(A) Ankle Cuffs--A metal band designed to be fastened around the ankle to restrain free movement of the legs.

(B) Handcuffs--Metal devices designed to be fastened around the wrist to restrain free movement of the hands and arms.

(C) Plastic Cuffs--Plastic devices designed to be fastened around the wrists or legs to restrain free movement of hands, arms, or legs. Plastic cuffs must be designed specifically for use in human restraint.

(D) Restraint Bed--A professionally manufactured and commercially available bed or integrated bed attachments that are specifically designed to facilitate safe human restraint.

(E) Restraint Chair--A professionally manufactured and commercially available restraint apparatus specifically designed for safe human restraint. The device restrains a subject in an upright, sitting position by restricting the subject's extremities, upper leg area, and torso with soft restraints. The apparatus may be fixed or wheeled for relocation.

(F) Waist Belt--A cloth, leather, or metal band designed to be fastened around the waist and used to secure the arms to the sides or front of the body.

(G) Wristlets--A cloth or leather band designed to be fastened around the wrist that may be secured to a waist belt or used in a non-ambulatory mechanical restraint.

(3) Chemical Restraint--The application of a chemical agent on one or more residents.

(4) Four-Point Restraint--The use of approved mechanical restraint devices on each of a resident's wrists and ankles to secure the resident in a supine position to a restraint bed.

(5) Mechanical Restraint--The application of an approved mechanical restraint device.

(6) Non-Ambulatory Mechanical Restraint--A method of prohibiting a resident's ability to stand upright and walk with the use of a combination of approved mechanical restraint devices, cuffing techniques, and the subject's body positioning. The four-point restraint and restraint chair are examples of acceptable non-ambulatory mechanical restraints.

(7) Personal Restraint--The application of an approved personal restraint technique.

(8) Physical Escort--Touching or holding a resident with a minimum use of force for the purpose of directing the resident's movement from one place to another. A physical escort is not considered a personal restraint.

(9) Protective Devices--Professionally manufactured devices used for the protection of residents or staff that do not restrict the movement of a resident. Protective devices are not considered mechanical restraint devices.

(10) Restraint--The application of an approved personal restraint technique, an approved mechanical restraint device, or a chemical agent to a resident so as to restrict the individual's freedom of movement.

(11) Riot--A situation in which three or more persons in the facility intentionally participate in conduct that constitutes a clear and present danger to persons or property and substantially obstructs the performance of facility operations or a program therein. Rebellion is a form of riot.

(12) Soft Restraints--Non-metallic wristlets and anklets used as stand-alone restraint devices or in conjunction with a restraint bed or restraint chair. These devices are designed to reduce the incidence of skin, nerve, and muscle damage to the subject's extremities.

§343.802. Requirements.

(a) Restraints shall be used only by juvenile supervision officers and juvenile probation officers.

(b) Prior to participating in a restraint, juvenile probation officers and juvenile supervision officers shall be trained in the use of the facility's specific verbal de-escalation policies, procedures, and practices.

(c) Prior to participating in a restraint, juvenile probation officers and juvenile supervision officers shall have received training and demonstrated competency in the approved restraint techniques and devices used by the facility.

(d) Restraints shall be used only to prevent imminent or active:

(1) self-injury or injury to others;

(2) serious property damage; or

(3) escapes.

(e) Restraints shall be used only as a last resort.

(f) Only the amount of force and type of restraint necessary to control the situation shall be used.

(g) Restraints shall be implemented in such a way as to protect the health and safety of the resident and others.

(h) Restraints shall be terminated as soon as the resident's behavior indicates that the imminent threat of self-injury, injury to others, or serious property damage or the threat of escape has subsided.

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

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CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts the repeal of §380.8733, concerning Surveillance and Supervision Levels in Parole Home Placement, §380.8763, concerning Main Campus - Corsicana Residential Treatment Center, and §380.8795, concerning New Treatment Programs, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6793).

TJJD also adopts new §380.8581, concerning Supervision Levels in Parole Home Placement, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6793).

TJJD also adopts amendments to §§380.8701 - 380.8703, 380.8705, 380.8707, 380.8715, 380.8767, 380.8769, 380.8771, 380.8775, 380.8779, 380.8781, 380.8785, 380.8789, and 380.8791, concerning Treatment, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6793).

TJJD also adopts an amendment to §380.8751, concerning Specialized Treatment, with changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6793). Changes to the proposed text consist of clarifying that a youth's need for *on-site* treatment, in addition to off-site treatment, is considered when determining whether a youth should be classified as having a low or moderate medical need.

SECTION-BY-SECTION SUMMARY

New §380.8581 republishes, with minor wording clarifications, the content that was previously found in §380.8733.

Throughout Subchapter B, minor clarifications, grammatical corrections, and terminology updates have been made. Various sections have been reorganized to promote clarity. Specific changes made throughout the subchapter are listed in the following paragraphs.

The amendment to §380.8701 clarifies that the assessment and treatment summary, rather than the individual case plan, is developed with the youth at the Orientation and Assessment Unit.

The amendment to §380.8702 includes information previously found in §380.8795 about TJJD's ability to pilot new treatment programs as the need arises.

The amendment to §380.8703 removes Stage 5 from the TJJD rehabilitation program and incorporates relevant stage indicators from Stage 5 into Stage YES. The amended rule also clarifies that youth are demoted to Stage 1 if they are recommitted for a new offense *committed while in the community.* However, if a youth is recommitted for an offense that occurred in a TJJD or contract facility, the youth will be placed on the most appropriate stage for his/her current behavior and progress in the program. Additionally, a youth who is returned to a high or medium restriction program for non-disciplinary reasons will also be placed on the most appropriate stage for his/her behavior and progress.

The amendment to §380.8705 deletes redundant information about visitation that is already addressed in §380.9312 of this title. A statutory citation has also been corrected.

The amendment to §380.8707 removes the exception that allowed a youth in the Sexual Behavior Treatment Program to be furloughed to the home where his/her victim or potential victim

resides before the home has been approved as a parole placement.

The amendment to §380.8715 adds a reference to the federal Administration of Children and Families as one of the entities that regulate the foster care reimbursement program.

The repeal of §380.8733 allows for the content of this section to be moved to Subchapter A of this chapter as new §380.8581.

The amendment to §380.8751 expands the group of youth who are assessed for sexual behavior treatment need to include youth who have a documented history of sexually inappropriate behavior. Previously, the rule required this assessment only for youth who were adjudicated for a sex offense. The amended rule also clarifies that the "moderate need" category for medical services also includes youth who have a condition that is moderate in severity and that may or may not require frequent access to clinical services. Additionally, the rule clarifies that a youth's noncompliance with medical treatment may cause his/her assessed medical need level to be raised. Several terminology changes have also been made to better reflect current usage among mental health practitioners.

The repeal of §380.8763 eliminates redundancy among TJJD rules. Rules such as §§380.8521, 380.8545, and 380.8751 address TJJD's ability to place youth at the TJJD-operated residential treatment center, which is no longer in Corsicana.

The amendment to §380.8767 clarifies that the psychiatric evaluation used to admit a youth to the crisis stabilization unit must be performed by a psychiatric provider (i.e., psychiatrist or mid-level psychiatric practitioner). The rule also clarifies that the psychological evaluation used to admit the youth must be approved, but not necessarily performed, by a doctoral-level psychologist. The amendment also clarifies that at the end of the 45-day evaluation period, a youth must be admitted to the stabilization unit via a due process hearing or transferred to another facility.

The amendment to §380.8769 deletes the definition of mental illness and instead refers to the definition provided in the Texas Health and Safety Code.

The amendment to §380.8771 removes state mental hospitals as an emergency placement option. The rule also clarifies that youth experiencing a psychiatric crisis may be temporarily placed in any hospital, not just a private psychiatric hospital, until he/she is able to be moved to the TJJD crisis stabilization unit.

The amendment to §380.8775 replaces the term "mental retardation" with "intellectual disability" and removes references indicating that the Corsicana Residential Treatment Center is the only TJJD facility where specialized services for youth with intellectual disabilities are offered.

The amendment to §380.8779 replaces the term "mental retardation" with "intellectual disability." The amended rule also adds references to the definitions of "intellectual disability" and "mental illness" as found in the Texas Health and Safety Code.

The amendment to §380.8781 removes certain elements that are not required by law from the criteria TJJD uses when determining whether to pursue a mental health commitment.

The amendment to §380.8785 clarifies that the youth is required to sign all appropriate sex offender registration forms. The amended rule also deletes a provision that required TJJD *not* to register youth with deferred registration orders if certain criteria are met. Instead, the rule states that TJJD will notify the committing court and district attorney concerning whether the youth completed treatment for the sex offense and will register the youth if required by law.

The amendment to §380.8789 includes only minor, non-substantive wording changes.

The amendment to §380.8791 changes the scope of the rule to apply to all youth with a high or moderate need for sexual behavior treatment. Previously the rule applied only to youth who were adjudicated for a sex offense or as a result of a plea bargain for the arrest of a sexual offense. The amended rule also no longer requires the youth to participate in presenting his/her safety and reintegration plan to the family as a prerequisite to returning home. Presentation of the safety and reintegration plan is now one of three ways a youth may show he/she is ready to return home. The other two ways are achieving the highest stage in the TJJD rehabilitation program and completing the sexual behavior treatment program.

The repeal of §380.8795 allows for the content of this rule to be consolidated into the amended §380.8702.

JUSTIFICATION FOR RULE CHANGES

The justification for these new, amended, and repealed rules is the promotion of youth rehabilitation through a more thorough assessment and reintegration process for youth with sexual behavior treatment needs and a simplified system for assessing youth progress in the general rehabilitation program. Another benefit is the availability of rules that more accurately reflect current statutes, TJJD's current organizational structure, and current terminology used by mental health practitioners.

PUBLIC COMMENTS

TJJD did not receive any public comments regarding the proposed rule changes.

RULE REVIEW

In the Proposed Rules section of the August 29, 2014, issue of the *Texas Register* (39 TexReg 6793), TJJD published its notice of intent to review all rules in Chapter 380, Subchapter B, as required by Texas Government Code §2001.039.

TJJD did not receive any comments regarding the rule review.

TJJD has concluded the rule review and has determined that the following rules should be repealed: §§380.8733, 380.8763, and 380.8795. Accordingly, these rules have been repealed. In some cases, relevant content from the repealed rules has been republished under a new section number or consolidated with existing rules, as described earlier in this notice. Additionally, TJJD has determined that the reasons for adopting all remaining rules in this subchapter continue to exist. Accordingly, the following rules are readopted with amendments, as described earlier in this notice: §§380.8701 - 380.8703, 380.8705, 380.8707, 380.8715, 380.8751, 380.8767, 380.8769, 380.8771, 380.8775, 380.8779, 380.8781, 380.8785, and 380.8791.

SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

DIVISION 6. PAROLE AND DISCHARGE

37 TAC §380.8581

STATUTORY AUTHORITY

The new section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropri-

ate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. The section is also adopted under Texas Human Resources Code §242.059, which authorizes TJJD to establish active parole supervision to aid children given conditional release to find homes and employment and become reestablished in the community. Additionally, the section is adopted under Texas Human Resources Code §245.001 which authorizes TJJD to employ parole officers to supervise and direct the activities of a parolee to ensure the parolee's adjustment to society in accordance with rules adopted by the agency.

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 B. TREATMENT
DIVISION 1. PROGRAM PLANNING

37 TAC §§380.8701 - 380.8703, 380.8705, 380.8707, 380.8715

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

The 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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37 TAC §380.8733

STATUTORY AUTHORITY

The repeal is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

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DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

37 TAC §§380.8751, 380.8767, 380.8769, 380.8771, 380.8775, 380.8779, 380.8781, 380.8785, 380.8789, 380.8791

STATUTORY AUTHORITY

The amended sections are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

Section 380.8751 is also adopted under Texas Human Resources Code §244.001, which requires TJJD to develop a written treatment plan for each child which outlines the child's specialized treatment needs, makes recommendations for meeting those needs, and makes an individually tailored statement of treatment goals, objectives, and timelines.

Section 380.8779 is also adopted under Texas Human Resources Code §244.011, which requires TJJD to discharge certain children who are mentally ill or mentally retarded once the minimum length of stay has been completed.

Section 380.8781 is also adopted under Texas Human Resources Code §244.0125, which authorizes TJJD to petition the committing court for the initiation of mental health commitment proceedings if a child is committed to TJJD under a determinate sentence.

§380.8751. Specialized Treatment.

(a) Purpose. The purpose of this rule is to establish the process by which youth committed to the Texas Juvenile Justice Department (TJJD) are assessed and treated for specialized treatment needs. The purpose of all provisions in this rule is to promote successful youth reentry and reduce risk to the community by addressing individual specialized treatment needs through programs that are shown to reduce risk to reoffend.

(b) Definitions. Except as indicated in this subsection, see §380.8501 of this title for definitions of terms used in this rule.

(1) Intensive Treatment Program--a high-intensity, residential program in which all youth receiving treatment reside in a common dormitory. Intensive treatment programs are designed to address youth with a high need for specialized treatment. Treatment is delivered by licensed or appropriately trained staff in a milieu that is designed to address the specialized need on a continuous basis.

(2) Psycho-educational Program--a low-intensity education program delivered by appropriately trained staff that is designed to address youth with a low need for specialized treatment.

(3) Sex Offense--a reportable adjudication as defined in Article 62.001 of the Texas Code of Criminal Procedure.

(4) Mental Health Professional--see definition in §380.9187 of this title.

(5) Short-Term Treatment Program--a moderate-intensity treatment program involving specialized groups and individual counseling delivered by licensed or appropriately trained staff. Short-term treatment programs are designed to address youth with a moderate need for specialized treatment.

(c) General Provisions.

(1) Youth with one or more specialized needs will have these needs addressed while under TJJD jurisdiction. Some specialized programs may be provided concurrently and others successively. Youth may have specialized needs addressed while in a high or medium restriction facility or on parole based on assessment outcomes, treatment team recommendations, and any necessary administrator approvals.

(2) If a youth cannot be provided the type(s) of specialized program designated in this rule for his/her assessed need level, the youth will be provided with the most appropriate alternate form of specialized intervention for that treatment need.

(d) Treatment Planning.

(1) Upon admission to TJJD, comprehensive assessments are conducted at the orientation and assessment unit to determine if a youth has any specialized treatment needs and to identify the type of specialized program that is best suited to address those needs. For each youth assessed as having a specialized treatment need, an initial plan documenting all specialized treatment needs and recommended programs is developed before the youth leaves the orientation and assessment unit.

(2) A comprehensive plan is developed for each youth with specialized treatment needs upon the youth's arrival at his/her initial placement. The plan must:

(A) include individually tailored statements regarding treatment goals and objectives;

(B) include the tentative sequence and start dates for each specialized program;

(C) be developed with input from the youth; and

(D) be documented in the youth's individual case plan.

(3) The sequence and start dates for specialized programs are based on individual youth needs, facility schedules, and program openings, with consideration given to the youth's minimum length of stay or minimum period of confinement.

(4) The comprehensive specialized treatment plan is reviewed, re-evaluated, and modified in accordance with rules for the review and modification of the individual case plan, as set forth in §380.8701 of this title. The plan is also modified following each reassessment of a youth's specialized treatment needs.

(5) Specialized treatment needs may be reassessed at any time during a youth's stay in TJJD.

(e) Specialized Treatment Needs. The areas of specialized treatment need are set forth in paragraphs (1) - (6) of this subsection, with each area given priority for placement and treatment based on urgency of need.

(1) Medical. Each youth is provided comprehensive medical and dental examinations. Based on the results of these examinations, each youth is assigned a need level for medical or dental services. Non-compliance with treatment may cause any youth to be designated as higher need than the underlying condition would typically warrant.

(A) High Need--includes youth who require medical, surgical, or dental services of an intense/acute nature. The youth has a serious acute condition, experiences an exacerbation of a chronic medical or dental condition, sustains a serious injury, and/or may require hospitalization. The youth's condition is unstable or unpredictable, and recovery requires 24-hour nursing care or supervision beyond the scope of normal infirmary services. The youth's medical needs, until resolved, take precedence over other therapeutic interventions and temporarily prevent active participation in programming.

(B) Moderate Need--includes youth who are diagnosed with a medical or dental condition that is moderate to serious in severity and that may require frequent access to clinical and/or hospital services for symptom exacerbation.

(C) Low Need--includes youth who are diagnosed with a condition that is mild to moderate in severity and does not require ongoing treatment or monitoring. The youth may be temporarily restricted from an activity due to an accident, injury, or illness of mild to moderate severity.

(D) None--includes youth with no medical or dental diagnosis requiring ongoing attention.

(2) Mental Health. The mental health assessment is provided by psychology and psychiatry staff through comprehensive psychological and psychiatric evaluation using the most current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM). Based on this assessment, each youth is assigned a need level for mental health treatment services.

(A) High Need--Level 1.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is disorganized, bizarre, and/or grossly inappropriate behavior in one or more of the following areas: social or interpersonal interactions, educational or vocational participation, or the ability to manage daily living requirements;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted;

(III) cannot meaningfully participate in programming until the underlying disorder is stabilized; and/or

(IV) are an imminent danger to themselves or others as a result of the mental disorder.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of impairment require a protective environment during this phase of the disorder and are treated at an agency-operated crisis stabilization unit or a psychiatric hospital with psychiatric care as the highest priority.

(B) High Need--Level 2.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, there is moderate to severe impairment in one or more of the following areas: social or interpersonal interaction, edu-

cational or vocational participation, or the ability to manage daily living requirements despite receiving psychiatric care and clinical support services;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) are having a difficult time maintaining stability and program participation despite receiving psychiatric services and local clinical support.

(ii) This level of impairment is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an intensive mental health treatment program with structured interventions and enhanced clinical support services in addition to regular psychiatric services.

(C) Moderate Need.

(i) This level of treatment need includes youth who:

(I) are diagnosed with a mental disorder. As a result of the disorder, behavior is mildly impaired by signs and symptoms of the mental disorder in one or more of the following areas: social or interpersonal interaction, educational or vocational participation, or ability to manage daily living requirements with regular psychiatric care and/or psychological intervention;

(II) have an assessment of adaptive functioning that is consistent with the level of impairment noted; and/or

(III) display symptoms or difficulties with adaptive behavior as a result of abuse or trauma.

(ii) This level of treatment need is not the result of a Conduct Disorder, Oppositional Defiant Disorder, or similar behavioral disorders and is not the result of intoxication or withdrawal from drugs.

(iii) Youth with this level of treatment need are placed in an agency facility offering the necessary psychiatric and clinical support. Youth identified with a history of abuse or trauma are offered interventions specific to the trauma to help maintain their ability to function and participate in programming.

(D) Low Need--includes youth who have a psychiatric diagnosis and require only periodic mental health or regular psychiatric services. The assessment of adaptive functioning is consistent with the level of impairment noted.

(E) None--includes youth who have:

(i) no mental health diagnosis;

(ii) a mental health diagnosis that is made by history but its influence on the youth's functioning is so mild that it is not a focus of any specialized mental health treatment; or

(iii) a diagnosis that is in remission without any current treatment intervention.

(3) Intellectual Disability. The diagnosis of Intellectual Disability is made by a psychology and psychiatry staff based on the results of a culturally validated assessment of cognitive functioning, mental abilities, reasoning, problem solving, abstract thinking, and adaptive behavior as defined in the latest edition of the DSM. Based on this diagnosis, each youth is assigned a need level for intellectual disability services. Youth are assigned to the placement that is best suited to meet the youth's individual treatment needs.

(A) High Need--includes youth diagnosed with Moderate or Severe Intellectual Disability and corresponding deficits in intellectual and adaptive functioning.

(B) Moderate--includes youth diagnosed with mild Intellectual Disability and a co-occurring mental health treatment need of moderate or low.

(C) Low Need--includes youth diagnosed with for mild Intellectual Disability and no co-occurring mental health treatment needs.

(D) None--includes youth who have no diagnosis of Intellectual Disability.

(4) Sexual Behavior. The sexual behavior treatment assessment is provided by a psychologist, mental health professional, or licensed sex offender treatment provider through a clinical interview and an agency-approved juvenile sexual offender assessment instrument. The assessment is provided for youth who have been adjudicated for a sex offense or who have a documented history of sexually inappropriate behavior. Based on this assessment, each youth is assigned a need level for sexual behavior treatment services.

(A) High Need--includes youth who receive an assessment rating of high need for sexual behavior treatment, based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive sexual behavior treatment program.

(B) Moderate Need--includes youth who receive an assessment rating of moderate need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a short-term sexual behavior treatment program.

(C) Low Need--includes youth who receive an assessment rating of low need for sexual behavior treatment based on the results of the clinical interview and the agency-approved juvenile sexual offender assessment instrument. Youth with this level of treatment need are assigned to participate in a psychosexual education curriculum.

(D) None--includes youth who have no assessed need for sexual behavior treatment.

(5) Capital and Serious Violent Offender. A psychologist or mental health professional makes a determination of need for capital and serious violent offender treatment for any youth who was found by a court or an administrative parole revocation hearing to have engaged in conduct that resulted in the death of a person, resulted in serious bodily injury to a person, or involved using or exhibiting a deadly weapon, and any youth referred by a psychologist based on a reasonable belief the youth is in need of capital and serious violent offender treatment. The determination is based on the youth's offense history and psychological assessment of the youth's need for specialized treatment intervention.

(A) High Need--youth are assigned to participate in an intensive capital and serious violent offender program.

(B) Medium Need--youth are assigned to participate in a short-term program to address aggression and violent behavior issues.

(C) Low Need--youth are assigned to participate in a psycho-educational anger management supplemental curriculum.

(D) None--includes youth who are assessed as not having a significant risk related to violent offending or behavior.

(6) Alcohol or Other Drug Treatment. Youth identified through a screening process as needing further alcohol or other drug (AOD) assessment are assessed and diagnosed by a psychologist or mental health professional using the latest edition of the DSM. Based on a clinical interview and the results of an agency-approved, comprehensive assessment instrument, each youth is assigned a need level for AOD programming.

(A) High Need--includes youth with a diagnosis of Substance Use Disorder and a high-intensity AOD treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in an intensive AOD treatment program.

(B) Moderate Need--includes youth with a diagnosis of Substance Use Disorder and a moderate-intensity AOD treatment need based on the results of an agency-approved assessment instrument. Youth with this level of treatment need are assigned to participate in a short-term AOD treatment program.

(C) Low Need--includes youth with any identified substance abuse history or risk that does not rise to the diagnostic level of Substance Use Disorder. Youth with this level of treatment need are assigned to participate in a psycho-educational AOD program.

(D) None--includes youth who have no history of substance abuse or risk of use.

(f) Requirement to Complete Specialized Treatment.

(1) This subsection applies only to youth committed to TJJD on or after September 1, 2009, who are assessed as having a high or moderate treatment need in the following treatment areas: Sexual Behavior; Capital and Serious Violent Offender; or Alcohol or Other Drug Treatment. This subsection does not apply to youth assigned to complete psycho-educational supplemental curricula in these treatment areas.

(2) This subsection does not apply to decisions made by the Release Review Panel under §380.8557 of this title.

(3) To qualify for transition to a medium restriction placement under §380.8545 of this title, a youth who has been assessed as having a high or moderate need must:

(A) complete the assigned specialized treatment program(s) while in a high restriction facility; or

(B) be scheduled to begin the assigned specialized treatment program(s) in a medium restriction facility, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement; or

(C) as approved by the final decision authority for transition in consultation with the division director over treatment programming or designee, make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment in a medium restriction facility. A requirement to complete treatment must be included in the youth's conditions of placement.

(4) To earn release to parole under §§380.8555, 380.8559, or 380.8569 of this title, a youth who has been assessed as having a high or moderate need must:

(A) complete the assigned specialized treatment program(s) while placed in the youth's current facility restriction level; or

(B) as approved by the division director over treatment programming or designee:

(i) be scheduled to begin the assigned specialized treatment program(s) while on parole status, as documented in the youth's most recent specialized treatment plan. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate; or

(ii) make sufficient progress in the assigned specialized treatment program with a corresponding reduction in risk to allow for the youth to continue the specialized treatment while on parole status. A requirement to complete treatment must be included in the youth's conditions of placement or conditions of parole, as appropriate.

(g) Individual Exceptions.

(1) The requirement to complete specialized treatment as described in subsection (f) of this section may be waived if the division director over treatment programming or designee determines that the youth is unable to participate in the assigned specialized treatment program or curriculum due to a medical or mental health condition or due to an intellectual disability.

(2) Each youth's individual circumstances are considered when determining the most appropriate type of specialized treatment intervention to assign. A youth may be assigned to a specialized program designated for a higher or lower need level than the youth's assessed need level for any reason deemed appropriate by the division director over treatment programming or designee.

(3) The executive director or his/her designee may make exceptions to provisions of this rule on a case-by-case basis, based on a consideration of the youth's best interests and public safety.

(4) The justification for any individual exceptions granted under this subsection must be documented.

(h) Specialized Aftercare. Youth who successfully complete one of the following specialized treatment programs, or who otherwise need specialized aftercare as determined by the youth's treatment team, will receive specialized aftercare on an outpatient basis as needed, as recommended by the treatment team, and as available:

(1) mental health treatment program;

(2) intensive or short-term sexual behavior treatment program;

(3) intensive or short-term alcohol or other drug treatment program; or

(4) intensive or short-term capital and serious violent offender treatment program.

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 November 6, 2014.

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Karen Kennedy
Interim General Counsel
Texas Juvenile Justice Department
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Proposal publication date: August 29, 2014
For further information, please call: (512) 490-7014

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37 TAC §380.8763, §380.8795

STATUTORY AUTHORITY

The repeals are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

The 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 D. YOUTH RIGHTS AND REMEDIES

37 TAC §380.9331

The Texas Juvenile Justice Department (TJJD) adopts an amendment to §380.9331, relating to the Youth Grievance System, without changes to the proposed text as published in the June 27, 2014, issue of the *Texas Register* (39 TexReg 4940).

The amended rule clarifies that appeals of decisions made in TJJD due process hearings or by the Release Review Panel are not addressed through the grievance system. The rule also no longer allows a youth to withdraw a grievance once it has been filed. Additionally, the rule now requires staff members to provide a written response to the grievant within 10 workdays (rather than 15 workdays) after a grievance has been filed.

The justification for the amended rule is the operation of a more effective and responsive youth grievance system.

TJJD did not receive any public comments regarding the proposal.

The amended section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions, and under §203.010(a), which requires TJJD to maintain a system to promptly and efficiently act on complaints received by TJJD by or on behalf of a juvenile relating to the programs, services, or facilities of TJJD.

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 F. SECURITY AND CONTROL

37 TAC §380.9707

The Texas Juvenile Justice Department (TJJD) adopts an amendment to §380.9707, relating to Custody and Supervision Rating, without changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6397).

The amendment clarifies that the rule does not apply to youth who are released from a facility on a conditional placement, as described in §380.8545 of this title.

The amended rule now allows the facility administrator, rather than the division director, to grant a one-level waiver of a youth's custody and supervision rating under certain circumstances.

Additionally, the list of incidents that preclude a youth from receiving a one-level waiver from the facility administrator now includes a major rule violation within the past 90 days and escape from a high restriction facility. Release from the Security Program within the past 90 days will no longer preclude a youth from receiving a one-level waiver.

The amended rule also includes a new provision allowing the division director to grant a two-level waiver of any youth's custody and supervision rating.

The justification for the amended rule is the promotion of youth rehabilitation through increased opportunities for supervised engagement with the community. An additional benefit will be increased efficiency of operations by empowering decision making at the local level by facility administrators.

TJJD did not receive any public comments regarding the proposal.

The amended section is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for the government of the schools, facilities, and programs under TJJD's authority. The section is also adopted under Texas Human Resources Code §244.005, which authorizes TJJD to permit a child liberty under supervision on conditions TJJD believes to be conducive to acceptable behavior and to order the child's confinement under conditions TJJD believes best designed for the child's welfare and the interests of the public.

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 85. IMPLEMENTATION OF THE OLDER AMERICANS ACT

SUBCHAPTER D. OLDER AMERICANS ACT SERVICES

40 TAC §85.302

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §85.302, in Chapter 85, Older Americans Act Services, with changes to the proposed text as published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5321).

The amendment is adopted to establish consistency in policy related to home-delivered meals provided under the Older Americans Act and home-delivered meals provided under Titles XIX and XX of the Social Security Act. Specifically, the amendment requires an area agency on aging (AAA) to allow a subcontractor to suspend, or a vendor to request suspension of, the delivery of meals to a program participant if the program participant is not home to accept delivery of a meal for two consecutive service days in a calendar month or three nonconsecutive service days in a calendar month. The amendment establishes a policy regarding the suspension of home-delivered meals in Chapter 85 that is consistent with that in Chapter 55, which governs home-delivered meals under Titles XIX and XX of the Social Security Act.

The purpose of the amendment is also to require the use of a new DADS form, "Consumer Needs Evaluation," which must be completed to determine a person's eligibility for home-delivered meals, instead of DADS Form 2060. The new form is slightly different from DADS Form 2060 because it includes additional questions regarding a person's ability to perform money management, heavy housework, and transportation. The additional questions are required by the Administration for Community Living, the federal agency that administers the programs authorized under the Older Americans Act.

The agency made a minor editorial change in §85.302(b)(2)(C)(ii) to correct punctuation.

DADS received a written comment from The Meals on Wheels Association of Texas. A summary of the comment and response follows.

Comment: The commenter stated that the instruction for DADS form "Consumer Needs Evaluation" (CNE) found on the DADS website refers to the CNE as DADS Form 2060. Form 2060 is titled "Needs Assessment Questionnaire and Task/Hour Guide" on the DADS website. The commenter suggests that the CNE be identified in rule as "AAA Consumer Needs Evaluation also known as DADS Form 2060 Needs Assessment Questionnaire and Task/Hour Guide."

Response: The instructions to the CNE on DADS website reference Form 2060 "Needs Assessment Questionnaire and Task/Hour Guide" in explaining the history of how AAAs have assessed a person's needs. However, Form 2060 is a separate form from the CNE. The agency did not make the requested change in response to the comment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§85.302. Nutrition Services.

(a) Purpose. This section establishes the requirements for nutrition services, a service provided under the Older Americans Act and funded, in whole or in part, by DADS.

(b) Eligibility.

(1) A AAA must ensure that a program participant who receives a congregate meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a congregate meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers;* and

(C) before service initiation and at least every 12 months thereafter, has had a Nutritional Risk Assessment completed by a service provider or a staff person of the AAA.

(2) A AAA must ensure that a program participant who receives a home-delivered meal:

(A) is 60 years of age or older;

(B) meets the eligibility criteria to receive a home-delivered meal as described in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregivers;* and

(C) before service initiation and at least every 12 months thereafter:

(i) has had a Nutritional Risk Assessment completed by a service provider or staff person of the AAA; and

(ii) has had a functional evaluation completed by a service provider or staff person of the AAA using the data elements contained in the DADS form "Consumer Needs Evaluation," available at www.dads.state.tx.us.

(c) Facilities and food service. A AAA must ensure that a service provider:

(1) complies with 25 TAC, Chapter 229 (relating to Food and Drug) in the preparation, handling, and provision of food; and

(2) provides the AAA a copy of all results from inspections required by state law or rule.

(d) Nutrition Services Incentive Program compliance. A AAA must ensure that a service provider:

(1) complies with the Older Americans Act, §311, relating to the Nutrition Services Incentive Program; and

(2) includes only eligible meals (that is, meals delivered to program participants who meet the criteria described in subsection (b) of this section) in reports related to the Nutrition Services Incentive Program.

(e) Meal costs. A AAA must ensure that a service provider:

(1) posts the cost of a meal for purposes of cost recovery as described in paragraph (2) of this subsection;

(2) recovers, at a minimum, the cost of a meal that is not an eligible meal as defined in DADS Program Instruction AAA - PI 307 *Nutrition Services Eligibility Requirements for Individuals Under Age 60 and Caregiver;* and

(3) keeps payments for ineligible meals separate from contributions from program participants.

(f) Service days. A AAA must ensure that a service provider:

(1) provides meals in accordance with the Older Americans Act, §331 and §336; and

(2) obtains, in accordance with DADS Program Instruction AAA - PI 300 *Older Americans Act Nutrition Waiver Requests,* prior approval from the AAA and DADS if service frequency is less than five days per week.

(g) Meal requirements. A AAA must ensure that a service provider complies with the Older Americans Act, §339(2)(A), relating to compliance with the current Dietary Guidelines for Americans and Dietary Reference Intakes.

(h) Menus.

(1) A AAA must ensure that, for each meal included on the menu and listed allowable substitutions, a service provider obtains:

(A) approval, in writing, from a dietitian consultant that the meal meets one third of the recommended dietary allowance as referenced in the Dietary Reference Intakes for a person 60 years of age or older and the current Dietary Guidelines for Americans as required by the Older Americans Act, §339(2)(A); and

(B) the written approval before the date the meal is served.

(2) The dietitian consultant required by paragraph (1) of this subsection must:

(A) be a licensed dietitian in accordance with Texas Occupations Code, Chapter 701;

(B) be a registered dietitian with the Commission on Dietetic Registration/American Dietetic Association; or

(C) have a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

(3) A AAA must ensure that a service provider's planned menus provide for variety in flavor, consistency, texture, and temperature.

(i) Standard recipes. A AAA must ensure that a service provider plans and manages food production through the use of standardized recipes adjusted to yield the number of servings needed and to provide for consistency in quality and documented nutrient content of food prepared.

(j) Modified diets.

(1) A AAA must permit a service provider to deviate from the standard menu pattern for therapeutic medical diets as required by the participant's medical condition as documented by a physician or other health care practitioner acting within the scope of the practitioner's authority and license.

(2) A AAA may allow a service provider to provide therapeutic medical diets based on the service provider's ability to do so.

(k) Emergency or inclement weather or service frequency less than five days a week. If a service provider delivers frozen, chilled, or shelf-stable meals for emergency or inclement weather situations, or if the service provider's service frequency is less than five days per week, a AAA must ensure that the service provider:

(1) delivers the meals only if the program participant has sanitary and safe conditions for storing, thawing, and reheating the meals;

(2) determines the meals can be safely handled by the program participant or another available person if the participant is unable to safely handle the meal; and

(3) complies with the DADS Program Instruction AAA - PI 300 *Older Americans Act Nutrition Waiver Requests.*

(l) Meal packaging. A AAA must ensure that a service provider:

(1) uses supplies and carriers to package and transport hot foods separately from cold foods;

(2) uses enclosed meal carriers used to transport easily damaged trays or containers of hot or cold foods to protect such food from contamination, crushing, or spillage and equips the meal carriers with insulation or supplemental hot or cold sources as is necessary to maintain safe temperatures; and

(3) complies with the following in packaging meals:

(A) seals the meal container to prevent moisture loss or spillage to the outside of the container;

(B) maintains a safe temperature of the packaged meal throughout transport;

(C) uses a container designed with compartments to separate food items for visual appeal and to minimize spillage between compartments; and

(D) uses a container a program participant can easily open.

(m) Holding time. A AAA must ensure that a service provider does not allow more than four hours to expire from the time the cooking or reheating of food is completed and the time the food is served to the program participant.

(n) Delivery of home-delivered meals.

(1) A AAA must ensure that a service provider:

(A) delivers meals between 10:30 a.m. and 1:30 p.m.;

(B) keeps meals that are prepared and packaged for delivery at the following temperatures:

(i) 40 degrees Fahrenheit or below for cold food items; and

(ii) 135 degrees Fahrenheit or above for hot food items;

(C) does not leave meals unattended at the program participant's residence; and

(D) develops written procedures:

(i) ensuring meals are safe and sanitary for the program participant;

(ii) requiring follow-up with a program participant who was not available when a meal delivery was attempted on the same day the attempt was made; and

(iii) ensuring a significant change in a program participant's physical or mental condition or environment is reported to the service provider and appropriate action taken by the service provider on the same day the service provider is notified of the change.

(2) A AAA may reimburse a service provider for a maximum of two attempted but unsuccessful meal deliveries per program participant per month.

(3) A AAA must ensure that:

(A) a subcontractor is allowed to suspend the delivery of meals to a program participant if the program participant is not home to accept delivery of a meal for:

(i) two consecutive service days in a calendar month; or

(ii) three non-consecutive service days in a calendar month; and

(B) a vendor is allowed to request that the AAA suspend the delivery of meals to a program participant for the reasons a subcontractor may suspend delivery of a meal as described in subparagraph (A) of this paragraph.

(4) If a subcontractor suspends the delivery of meals to a program participant, the AAA must ensure that the subcontractor:

(A) documents the reason for the suspension in the program participant's record; and

(B) determines whether the delivery of meals to the program participant should be reinstated or terminated.

(5) If a AAA receives a request from a vendor to suspend the delivery of meals to a program participant, the AAA must:

(A) suspend the delivery of meals if the AAA verifies the basis for the request, as described in paragraph (3)(B) of this subsection;

(B) document the reason for the suspension in the program participant's record; and

(C) if the delivery of meals is suspended, determine whether the delivery of meals to the program participant should be reinstated or terminated.

(o) Training.

(1) A AAA must ensure that a service provider provides at least one hour of training to a staff person or volunteer of a service provider who is involved in the administration or provision of nutrition services before the staff person or volunteer assumes duties. The training topics must include:

(A) program participant confidentiality;

(B) procedures used in handling emergency situations involving program participants;

(C) sanitary methods used in serving and delivering meals;

(D) general knowledge and basic techniques of working with a person 60 years of age or older and a person with a disability; and

(E) personal hygiene.

(2) A AAA must ensure that a service provider provides the following training to a staff person or volunteer of a service provider who is involved only in the administration of nutrition services before the staff person or volunteer assumes duties:

(A) the training described in paragraph (1) of this subsection; and

(B) one hour of training on the content and implementation of applicable forms, rules, procedures, and policies of DADS, the AAA, and the service provider relating to the administration or provision of nutrition services.

(3) A AAA must ensure that a service provider provides at least two hours of training to a food service supervisor before the supervisor assumes duties. Training topics must include:

(A) personal hygiene;

(B) food storage, preparation, and service, including prevention of food-borne illness;

(C) equipment cleaning before, during, and after meal service;

(D) selection of proper utensils and equipment for transporting and serving foods;

(E) automatic and manual dishwashing procedures; and

(F) accident prevention.

(4) In addition to the training required by paragraph (3) of this subsection, a AAA must ensure that a service provider provides at least six hours of training to a food service supervisor no later than 30 days after the supervisor assumes duties. Training topics must include:

(A) practical procedures for food preparation, storage, and serving;

(B) portion control of food in appropriate dishes;

(C) use of standardized recipes;

(D) nutritional needs and meal pattern requirements of older program participants to be served; and

(E) quality control of:

(i) flavor;

(ii) consistency;

(iii) texture;

(iv) temperature; and

(v) appearance (including the use of garnishes).

(5) A AAA must ensure that the service provider's food service supervisor complies with 25 TAC §229.163 (relating to Management and Personnel).

(6) A AAA must ensure that a service provider documents the provision of training required by paragraphs (1) - (4) of this sub-

section. The documentation must include the names of the staff person or volunteer being trained and the trainer; the topics covered; and the date, time, and length of the training.

(7) A AAA must ensure that a service provider has an adequate number of staff persons available during the time congregate meals are provided who are certified in:

(A) first aid;

(B) cardiopulmonary resuscitation; and

(C) operating an automatic external defibrillator, if one is available.

(p) Nutrition outreach. A AAA must ensure that a service provider develops and maintains a written outreach plan giving priority to persons described in the Older Americans Act, §306(a)(1).

(q) Nutrition education. In accordance with the Older Americans Act, §339(2)(J), a AAA must ensure that a program participant is provided with nutrition screening, nutrition education, and if appropriate, nutrition assessment and counseling.

(r) Political activity. A AAA must ensure that a service provider does not:

(1) use a congregate meal site for political campaigning except in those instances where a representative from each political party running in the campaign is given an equal opportunity to participate; or

(2) distribute political materials at a congregate meal site.

(s) Religious activities and prayer. A AAA must ensure that a service provider does not:

(1) allow a prayer or other religious activity to be officially sponsored, led, or organized by a nutrition-site staff person; or

(2) prohibit a program participant from praying silently or audibly at a congregate meal site if the program participant so chooses.

(t) Monitoring.

(1) A AAA must monitor:

(A) a subcontractor providing nutrition services in accordance with §85.201(e) of this chapter (relating to AAA Administrative Responsibilities); and

(B) a vendor providing nutrition services in accordance with §83.19(f) of this title (relating to Direct Purchase of Service (DPS)).

(2) A AAA must ensure that the Department of State Health Services or the local health authority, as applicable, or the service provider monitors a food preparation site, at least annually, to determine whether the requirements of this section have been followed.

(3) A AAA must ensure that the service provider submits the written report of such monitoring to the AAA.

(u) Weather-related emergencies, fire, and other disasters. A AAA must ensure that a service provider:

(1) keeps facilities and equipment available for emergencies and disasters, in accordance with a plan developed by the service provider, that gives priority to program participants 60 years of age or older;

(2) adopts written procedures ensuring the availability of food for program participants during emergencies and disasters; and

(3) promptly notifies the Department of State Health Services and the AAA of a food-borne disease outbreak, (that is, two or more cases of a similar illness resulting from the ingestion of a common food).

(v) Subcontracting by a service provider. A AAA must require a service provider to obtain written approval from the AAA before the service provider contracts with any entity for meal preparation or service delivery.

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 November 4, 2014.

TRD-201405253
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: November 24, 2014
Proposal publication date: July 11, 2014
For further information, please call: (512) 438-4162

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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §§452.1 - 452.5, 452.8

The Texas Veterans Commission (commission) adopts amendments to 40 TAC §452.1, concerning Charges for Copies of Public Records; §452.2, concerning Advisory Committees; §452.3, concerning Negotiated Rulemaking; §452.4, concerning Alternative Dispute Resolution; §452.5, concerning Petition for Adoption of Rules; and §452.8, concerning Employee Training and Education, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6817). The rules will not be republished.

The adopted amendments are made following a comprehensive rule review of the chapter. The purpose of the amendments is to ensure the agency's administrative rules are current and accurately reflect commission policies and procedures. The majority of the amendments to §452.2 include minor grammatical and formatting revisions to provide consistency throughout the agency's rules. The amendments also included adding new subparagraphs (B) and (C) under §452.2(c)(2) to expand the agency's conflict of interest policy regarding the Fund for Veterans' Assistance Advisory Committee members who are also officers, directors or employees of organizations that have an open grant or have applied for a grant while serving on the committee.

No comments were received during the comment period regarding the proposed rule amendments. However, after the comment period closed, the commission received comments from 35 individuals regarding the proposed amendments to §452.2(c)(2)(B). The commenters were all opposed to the proposed rule language updating the Fund for Veterans' Assistance Advisory Committee membership and conflict of interest policy.

The commenters expressed concerns that such a change in the rule would be too restrictive and will prevent many qualified and dedicated veterans from serving as advisory committee members. The commission considered the comments and determined that the amendments are consistent with commission policy, and serve the commission's goal of eliminating conflicts of interest in the grant program to the greatest extent possible. The amended rule only impacts those individuals who are officers, directors or employees of organizations that hold a grant or intend to apply for a grant, and therefore this exclusion is not permanent. Based on historical data, only six veterans service organizations fit into this category, and their officers, directors or employees are welcome to apply for membership on other advisory committees the commission oversees. Additionally, only one veterans service organization currently holds a grant.

The amendments are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code Chapters 552, 656, 2001, 2008 and 2009.

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 November 10, 2014.

TRD-201405376
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: November 30, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 463-1981

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CHAPTER 453. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §453.1

The Texas Veterans Commission (commission) adopts amendments to 40 TAC §453.1, concerning Historically Underutilized Business Program, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820). The rule will not be republished.

The adopted amendments are made following a comprehensive rule review of the chapter to better reflect current commission procedures and to clarify where needed. The amendments delete or replace obsolete references and include minor formatting revisions to simplify or clarify the rule.

No comments were received regarding the proposed rule amendments.

The amendments are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §2161.003, which requires state agencies to adopt the rules of the Comptroller of Public Accounts which apply to the agency's construction projects and purchases of goods and services paid for with appropriated money.

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 November 10, 2014.

TRD-201405377
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: November 30, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 463-1981

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CHAPTER 455. TAPS PROGRAM

40 TAC §§455.3 - 455.5

The Texas Veterans Commission (commission) adopts amendments to 40 TAC §455.3, concerning Definitions; §455.4, concerning Process; and §455.5, concerning Adoption of Standard Form, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820). The rules will not be republished.

The adopted amendments are made following a comprehensive rule review of the chapter to better reflect current commission procedures and to clarify where needed. The amendments delete or replace obsolete references and include minor formatting revisions to simplify or clarify the rules.

No comments were received regarding the proposed rule amendments.

The amendments are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.0072, which authorizes the agency to establish the Taps tuition voucher program.

The following statute is also affected by the adopted amendments: Texas Education Code §54.344, concerning Participants in Military Funerals.

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 November 10, 2014.

TRD-201405378
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Effective date: November 30, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 463-1981

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Veterans Commission

Title 40, Part 15

The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 450, relating to Veterans County Service Officers Certificate of Training.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5443). The Commission received public comment in response to the Notice of Intent to Review from one interested party.

The commenter suggested revisions to this chapter that would expand the description of what is considered "approved training" to meet the Veterans County Service Officers' (VCSO) annual certification requirement. The suggested revisions would let VCSOs attend training sponsored or conducted by organizations other than the Commission to earn the required credit hours to be eligible for annual certification. However, the restriction in the rules that requires training to be conducted by only the Commission is governed by statute. This provision may not be removed from the administrative rules without first obtaining a change in the statute.

After completing the review of 40 TAC Chapter 450, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 450.

TRD-201405341
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 451, relating to Veterans County Service Officers Accreditation.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5443). The Commission received public comment in response to the Notice of Intent to Review from one interested party.

The commenter suggested revisions to this chapter that would expand the description of what is considered "approved training" to meet the Veterans County Service Officers' (VCSO) annual certification requirement. The suggested revisions would let VCSOs attend training sponsored or conducted by organizations other than the Commission to earn the required credit hours to be an accredited representative of the Texas Veterans Commission. However, the restriction in the rules that requires training to be conducted by only the Commission is governed by statute. This provision may not be removed from the administrative rules without first obtaining a change in the statute.

After completing the review of 40 TAC Chapter 451, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 451.

TRD-201405342
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 452, relating to Administration General Provisions.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5443). The Commission received no comments regarding the proposed rule review.

After completing its review of 40 TAC Chapter 452, the Commission determined that the reasons for initially adopting the rules continue to exist. Furthermore, the review process indicated that amendments were necessary to better reflect current Commission procedures and policy, clarify where needed, delete or replace outdated references, and make minor grammatical and formatting revisions. Such amendments were proposed and published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6817).

Elsewhere in this issue of the *Texas Register,* the Commission concurrently adopts the amendments to 40 TAC Chapter 452. Therefore, the Commission readopts Chapter 452 with amendments as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6817) and adopted by the Commission at its November 5, 2014 meeting.

This notice concludes the Commission's review of 40 TAC Chapter 452.

TRD-201405343

H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 453, relating to Historically Underutilized Business Program.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5444). The Commission received no comments regarding the proposed rule review.

After completing its review of 40 TAC Chapter 453, the Commission determined that the reasons for initially adopting the rules continue to exist. Furthermore, the review process indicated that amendments were necessary to delete outdated references, update the proper authorities cited, and make minor formatting revisions. Such amendments were proposed and published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820).

Elsewhere in this issue of the *Texas Register,* the Commission concurrently adopts the amendments to 40 TAC Chapter 453. Therefore, the Commission readopts Chapter 453 with amendments as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820) and adopted by the Commission at its November 5, 2014 meeting.

This notice concludes the Commission's review of 40 TAC Chapter 453.

TRD-201405344
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 455, relating to Taps Program.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5444). The Commission received no comments regarding the proposed rule review.

After completing its review of 40 TAC Chapter 455, the Commission determined that the reasons for initially adopting the rules continue to exist. Furthermore, the review process indicated that amendments were necessary to better reflect current Commission procedures and policy, delete or replace outdated references, and update the standard form adopted by the Commission to certify the sounding of "Taps." Such amendments were proposed and published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820).

Elsewhere in this issue of the *Texas Register,* the Commission concurrently adopts the amendments to 40 TAC Chapter 455. Therefore, the Commission readopts Chapter 455 with amendments as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6820) and adopted by the Commission at its November 5, 2014 meeting.

This notice concludes the Commission's review of 40 TAC Chapter 455.

TRD-201405345
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 456, relating to Contract Negotiation and Mediation.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5444). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 456, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 456.

TRD-201405346
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 457, relating to Protests of Agency Purchases.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5444). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 457, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 457.

TRD-201405347
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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The Texas Veterans Commission (Commission) has completed its review of 40 TAC Chapter 459, relating to Transportation Support Services.

The notice of proposed rule review was published in the July 11, 2014, issue of the *Texas Register* (39 TexReg 5445). The Commission received no comments regarding the proposed rule review.

After completing the review of 40 TAC Chapter 459, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039.

This notice concludes the Commission's review of 40 TAC Chapter 459.

TRD-201405348
H. Karen Fastenau
General Counsel
Texas Veterans Commission
Filed: November 10, 2014

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §108.1431(c)

DARS ECI Sliding Fee Scale for Families Enrolled On or After September 1, 2015	
If the adjusted income is within the following % of the federal poverty guideline:	**the maximum charge is equal to the following amounts or the full cost of services, whichever is less:**
≤ 100%	$0
>100% to ≤150%	$5
>150% to ≤200%	$14
> 200% to ≤250%	$28
> 250% to ≤300%	$45
> 300% to ≤350%	$67
> 350% to ≤400%	$124
> 400% to ≤450%	$210
> 450% to ≤500%	$313
> 500% to ≤550%	$433
> 550% to ≤600%	$474
> 600% to ≤650%	$515
> 650% to ≤700%	$557
> 700% to ≤750%	$598
> 750% to ≤800%	$639
> 800% to ≤850%	$680
> 850% to ≤900%	$722
> 900% to ≤950%	$763
> 950% to ≤1000%	$804
> 1000% of the federal poverty guidelines	**the full cost of services.**
If the parent:	**then the family monthly maximum payment equals the:**
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate	full cost of services.

Figure: 40 TAC §108.1432

DARS ECI Sliding Fee Scale for Families Enrolled Before September 1, 2015	
If the adjusted income is within the following % of the federal poverty guideline:	**then the maximum charge is:**
≤ 100%	$0
>100% to ≤150%	$3
>150% to ≤200%	$5
> 200% to ≤250%	$10
> 250% to ≤350%	$20
> 350% to ≤400%	$55
>400%	The full cost of service not to exceed 5% of family's adjusted income.
If the parent:	**then the family monthly maximum payment equals the:**
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate.	full cost of services.

Thomas Huizar

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety and Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code, and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *The State of Texas v. Kenneth Campbell, Sr., and the Kenneth Campbell, Sr. Family Trust,* Cause No. D-1-GV-14-000038; in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendants' Operations: Defendants Kenneth Campbell, Sr., and the Kenneth Campbell, Sr. Family Trust, own and operate an unauthorized municipal solid waste disposal site located near Center, Shelby County, Texas. In 2007, investigators with the Texas Commission on Environmental Quality observed large quantities of mostly construction and demolition waste at the site. Campbell entered an agreed administrative order with the TCEQ wherein he agreed to remove the waste from the site. Investigators returned to the site in 2012 and 2013 to find that Campbell had not only failed to remove the waste, but had increased the quantity. Since the State filed this suit, Campbell has removed the waste from the site.

Proposed Agreed Judgment: The Agreed Final Judgment orders Kenneth Campbell, Sr., to pay civil penalties to the State in the amount of $4,800. The Judgment also awards attorney's fees to the State in the amount of $1,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Matthew B. Miller, Assistant Attorney General, Environmental Protection Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201405337
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 7, 2014

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Bowie County

Request for Comments and Proposals: Additional Medicaid Beds

Department of Aging and Disability Services (DADS) rule 40 TAC §19.2322(h)(7) permits the County Commissioners Court of a rural county with a population of less than 100,000 to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county.

The Bowie County Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Bowie County. The Commissioners Court is soliciting public input and comments on whether the request should be made. Further, the Commissioners Court seeks proposals from qualified persons or entities interested in providing additional Medicaid nursing home services in Bowie County.

If you wish to make comments in this regard or if you wish to make a proposal to the Commissioners Court, these comments and/or proposals must be submitted in writing on or before December 1, 2014, to Kelley Blackburn, Commissioner Precinct 3 at 710 James Bowie Drive, New Boston, Texas 75570.

TRD-201405391
Kelley Blackburn
Commissioner Precinct 3
Bowie County
Filed: November 10, 2014

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/17/14 - 11/23/14 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/17/14 - 11/23/14 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-201405386
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 10, 2014

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the com-

mission 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 January 9, 2015. 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 January 9, 2015. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Anna Lee; DOCKET NUMBER: 2014-0690-PST-E; IDENTIFIER: RN105085757; LOCATION: Grapeland, Houston County; TYPE OF FACILITY: property with an underground storage tank (UST) system; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,937; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Brenham Independent School District; DOCKET NUMBER: 2014-1192-PST-E; IDENTIFIER: RN101675478; LOCATION: Brenham, Washington County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: City of Harker Heights; DOCKET NUMBER: 2014-1276-MWD-E; IDENTIFIER: RN101920395; LOCATION: Harker Heights, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010155001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Olton; DOCKET NUMBER: 2014-1160-MSW-E; IDENTIFIER: RN102740198; LOCATION: Olton, Lamb County; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.141(a), by failing to prevent the unauthorized disposal of municipal solid waste within the buffer zone; PENALTY: $3,825; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: Donald R. Cole and Susan E. Cole dba Blue Ridge Water System; DOCKET NUMBER: 2014-1062-PWS-E; IDENTIFIER: RN104709860; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1 - June 30, 2011, July 1 - December 31, 2011, January 1 - June 30, 2013, and July 1 - December 31, 2013 monitoring periods; and 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter and by failing to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit DLQORs for the first and second quarters of 2013; PENALTY: $2,571; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: EnLink Midstream Services, LLC; DOCKET NUMBER: 2014-1330-AIR-E; IDENTIFIER: RN102694478; LOCATION: Paradise, Wise County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §§122.121, 122.133(4), and 122.241(b), and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months prior to the expiration of a General Operating Permit; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2014-0429-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulations (CFR) §63.654(c), Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 14, Federal Operating Permit (FOP) Number O1356, Special Terms and Conditions (STC) Number 14, FOP Number O2039, STC Number 13, FOP Number O2040, STC Number 12, and FOP Number O2046, STC Number 14, by failing to conduct monthly volatile organic compounds monitoring in accordance with the requirements of the TCEQ Sampling Procedures Manual, Appendix P; 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, and FOP Number O2000, STC Number 18, by failing to prevent unauthorized emissions; and 30 TAC §§101.20(3), 116.715(a), and 122.143(4), THSC, §382.085(b), and 40 CFR §60.13(a), by failing to comply with the requirements of 40 CFR Part 60 Appendix F, Procedure 1; PENALTY: $251,073; Supplemental Environmental Project offset amount of $100,429 applied to Southeast Texas Regional Planning Commission; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Harvest Family Church of the Assemblies of God; DOCKET NUMBER: 2014-1145-PWS-E; IDENTIFIER:

RN101185502; LOCATION: Cypress, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1 - June 30, 2010, July 1 - December 31, 2010, January 1 - June 30, 2011, July 1 - December 31, 2011, January 1 - June 30, 2013 and July 1 - December 31, 2013 monitoring periods; and 30 TAC §290.122(c)(2)(A) and (f), by failing to post public notification and submit a copy of the public notification to the executive director regarding the failure to collect a set of repeat distribution total coliform samples within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in November 2012; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Jose Valentin Garcia; DOCKET NUMBER: 2014-0931-MSW-E; IDENTIFIER: RN106728256; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: Nueces County; DOCKET NUMBER: 2014-1187-PST-E; IDENTIFIER: RN102788965; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: aviation fueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: OZARK BOTTLED WATER, INCORPORATED dba Hill Country Springs; DOCKET NUMBER: 2014-1470-PWS-E; IDENTIFIER: RN101179521; LOCATION: Austin, Travis County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(3)(C)(iii) and (4), by failing to submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter; and 30 TAC §290.110(e)(2) and (5) and §290.111(h)(2) and (12), by failing to submit a Surface Water Monthly Operating Report to the executive director by the tenth day of the month following the end of the reporting period for April, May, and June 2014; PENALTY: $308; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: Panda Sherman Power, LLC; DOCKET NUMBER: 2014-1200-AIR-E; IDENTIFIER: RN105672687; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: natural gas-fired power plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3545, General Terms and Conditions, by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; PENALTY: $2,813; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Pettus Municipal Utility District; DOCKET NUMBER: 2014-1120-PWS-E; IDENTIFIER: RN101182053; LOCATION: Pettus, Bee County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director; PENALTY: $753; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: RANCHO LA FUENTE PARTNERS, LLC dba Willow Manor Mobile Home Park; DOCKET NUMBER: 2014-1211-PWS-E; IDENTIFIER: RN101239549; LOCATION: Rosharon, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(f)(1)(B) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level for fecal coliform and *Escherichia coli* for the month of July 2014; and 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required 10 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director for the January 1 - June 30, 2013, July 1 - December 31, 2013, and January 1 - June 30, 2014 monitoring periods; PENALTY: $1,915; ENFORCEMENT COORDINATOR: Katelyn Samples, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Raymond W. Blair, Jr. dba Last Resort Properties; DOCKET NUMBER: 2014-1195-PWS-E; IDENTIFIER: RN102689452; LOCATION: Little Elm, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter for the first quarter of 2013 through the first quarter of 2014; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data for the year 2012; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli (E. coli)* sample from the facility's active source within 24 hours of being notified of a distribution total coliform-positive result and failed to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect a raw groundwater source *E. coli* sample in October 2013; and 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect a raw groundwater source *E. coli* sample in August 2013 and a routine coliform sample in November 2013; PENALTY: $1,012; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Robert McHam, Limited; DOCKET NUMBER: 2014-1315-AIR-E; IDENTIFIER: RN107378739; LOCATION: Midland, Martin County; TYPE OF FACILITY: rock crushing plant; 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 rock crusher; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512)

239-2617; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(17) COMPANY: Shell Chemical LP; DOCKET NUMBER: 2014-1110-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), 40 Code of Federal Regulations §60.18(c)(3)(ii), Federal Operating Permit (FOP) Number O1945, Special Terms and Conditions (STC) Number 21, and New Source Review (NSR) Permit Number 3179, Special Conditions (SC) Number 14.A., by failing to maintain the minimum net heating value of 300 British thermal units per standard cubic foot for the A and S Flare, Emission Point Number (EPN) A1301; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O1945, STC Number 21, and NSR Permit Number 3179, SC Number 18, by failing to maintain the required minimum firebox temperature of 1,500 degrees Fahrenheit for the Regenerative Thermal Oxidizer, EPN H87002; PENALTY: $19,688; Supplemental Environmental Project offset amount of $7,875 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Southwest Milam Water Supply Corporation; DOCKET NUMBER: 2014-1111-MWD-E; IDENTIFIER: RN104147210; LOCATION: Rockdale, Milam County; TYPE OF FACILITY: water treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014508001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $1,025; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2014-1053-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 20432 and PSDTX994M1, Special Conditions Number 1, Federal Operating Permit Number O2213, Special Terms and Conditions Number 21, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $18,750; Supplemental Environmental Project offset amount of $9,375 applied to Houston-Galveston Area Council - AERCO; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Tres Palacios Gas Storage LLC; DOCKET NUMBER: 2014-1244-AIR-E; IDENTIFIER: RN105191738; LOCATION: Markham, Matagorda County; TYPE OF FACILITY: gas storage facility; RULES VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.4243(a)(2)(iii), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3362, Special Terms and Conditions Numbers 1A and 7, and New Source Review Permit Number 81228, Special Conditions Number 2B, by failing to conduct subsequent performance testing after reaching 8,760 hours of operation; PENALTY: $5,688; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: TURTLE COVE LOT OWNERS ASSOCIATION, INCORPORATED; DOCKET NUMBER: 2014-1025-PWS-E; IDENTIFIER: RN101246148; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2) and (i)(1), by failing to collect lead and copper tap samples at the required five sample sites and provide the results to the executive director; and 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes based on the locational running annual average; PENALTY: $605; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201405352
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2014

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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 January 9, 2015. 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 January 9, 2015. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: Angel Garcia d/b/a Garcia Mechanics; DOCKET NUMBER: 2013-2021-MSW-E; TCEQ ID NUMBER: RN105998041; LOCATION: 404 North 85th Street, Edinburg, Hidalgo County; TYPE OF FACILITY: automotive repair shop; RULES VIOLATED: Texas Health and Safety Code, §371.041 and 40 Code of Federal Regulations §279.22(d), and 30 TAC §324.15, by failing to perform response action upon detection of a release of used oil; and 30 TAC §324.4(1), by failing to comply with the prohibition requirements not to collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in a manner that endangers the public health or welfare of the environment; PENALTY: $577; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC

175, (512) 239-2053; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: C & S PETROLEUM, INC d/b/a C & S Mini Mart; DOCKET NUMBER: 2014-0695-PST-E; TCEQ ID NUMBER: RN101543387; LOCATION: 107 East Broad Street, Mansfield, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,813; STAFF ATTORNEY: Laura Evans, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Daniel H. Dake and Kathy Lott d/b/a Twin Lakes Water; DOCKET NUMBER: 2014-0462-PWS-E; TCEQ ID NUMBER: RN101453512; LOCATION: 6495 Appian Way, Fort Worth, Tarrant County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(E), by failing to collect monthly groundwater source assessment samples when required by the executive director; 30 TAC §290.108(c) and (e), by failing to collect radionuclide samples and provide the results to the executive director for the triennial monitoring period from January 1, 2011 to December 31, 2013; and 30 TAC §290.116(b)(2), by failing to complete corrective action or be in compliance with an approved corrective action plan and schedule within 120 days of receiving notification from a laboratory of fecal indicator-positive raw groundwater samples; PENALTY: $3,405; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Muhammad Aslam d/b/a Braker Mart; DOCKET NUMBER: 2013-1607-PST-E; TCEQ ID NUMBER: RN102276375; LOCATION: 2601 West Braker Lane, Austin, Travis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400.

(5) COMPANY: N & H Enterprises And Son Inc. d/b/a Super Stop 7; DOCKET NUMBER: 2014-0367-PST-E; TCEQ ID NUMBER: RN101433019; LOCATION: 5138 Gulfway Drive, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank system and a convenience store; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(3), by failing to conduct monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.246(a)(3) and (4), by failing to maintain all required Stage II records at the station; THSC, §382.085(b) and 30 TAC §115.242(d)(3)(C) and (J), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $7,347; STAFF ATTORNEY: Michael Vitris, Litigation Division, MC 175, (512) 239-2044; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Petrus Adrianus Boekhorst; DOCKET NUMBER: 2013-1859-AGR-E; TCEQ ID NUMBER: RN101716298; LOCATION: 336 County Road 3368, Saltillo, Hopkins County; TYPE OF FACILITY: dairy with a concentrated animal feeding operation (CAFO); RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §321.31(a) and §321.37(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004905000, Section IX.D, Standard Permit Conditions, by failing to prevent the discharge of wastewater from a CAFO production area; and TWC, §26.121(a)(1), 30 TAC §321.31(a) and §321.40(d), and TPDES Permit Number WQ0004905000, Part VII, Pollution Prevention Plan Requirements, Section A.8(d)(2)(i), by failing to prevent the discharge of wastewater from a CAFO Land Management Unit; PENALTY: $4,751; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: RKM UTILITY SERVICES, INC.; DOCKET NUMBER: 2013-2096-WQ-E; TCEQ ID NUMBER: RN106498652; LOCATION: intersection of Briarwood Drive and South Old Orchard Lane, Lewisville, Denton County; TYPE OF FACILITY: construction site; RULE VIOLATED: TWC, §26.121(a) and (d), by failing to prevent an unauthorized discharge into or adjacent to any water in the state; PENALTY: $7,500; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Seneca Water Supply Corporation; DOCKET NUMBER: 2013-1904-MLM-E; TCEQ ID NUMBER: RN101452902; LOCATION: off Highway 69, approximately 2.5 miles south of Woodville, Tyler County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §26.121(a), 30 TAC §290.42(i) and §305.42(a), and TCEQ AO Docket Number 2011-2042-MLM-E Ordering Provisions Numbers 2.a.i. and 2.e., by failing to obtain authorization from the commission prior to any discharge of wastewater into or adjacent to water in the state; 30 TAC §290.46(m) and TCEQ AO Docket Number 2011-2042-MLM-E, Ordering Provision Number 2.a.ii., by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility's facilities and equipment and maintain the grounds and facilities in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water; 30 TAC §290.42(e)(4)(A) and TCEQ AO Docket Number 2011-2042-MLM-E, Ordering Provision Number 2.b.iii., by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupation Safety and Health Administration standards and is readily accessible outside the chlorination room; 30 TAC §290.42(e)(4)(B) and TCEQ AO Docket Number 2011-2042-MLM-E, Ordering Provision Number 2.b.iv., by failing to properly house chlorine cylinders so that they are protected from adverse weather conditions and vandalism; 30 TAC §290.41(c)(1)(F) and TCEQ AO Docket Number 2011-2042-MLM-E, Ordering Provision Number 2.c.ii., by failing to obtain sanitary control easements that cover the land within 150 feet of Well Numbers 1 and 2; and 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence to protect the well, water treatment plant, and storage and pressure maintenance facilities; PENALTY: $21,220; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-1877; REGIONAL OFFICE: Beaumont

Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Virginia Franklin Fuller d/b/a Franklin Water System 3; DOCKET NUMBER: 2013-0819-PWS-E; TCEQ ID NUMBER: RN101264372; LOCATION: 4813 Idalou Road, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.41(c)(1)(D) and TCEQ AO Docket Number 2009-1295-PWS-E, Ordering Provision Number 3.b., by failing to ensure that livestock in pastures are not allowed within 50 feet of a water supply well; Texas Health and Safety Code (THSC), §341.0315(c), 30 TAC §290.45(b)(1)(C)(ii), and TCEQ AO Docket Number 2009-1295-PWS-E, Ordering Provision Number 3.d.i., by failing to provide minimum storage capacity of 200 gallons per connection; THSC, §341.0315(c), 30 TAC §290.45(b)(1)(C)(iii), and TCEQ AO Docket Number 2009-1295-PWS-E, Ordering Provision Number 3.d.ii., by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute per connection at each pump station or pressure plane; 30 TAC §290.46(u) and TCEQ AO Docket Number 2009-1295-PWS-E, Ordering Provision Number 3.d.iii., by failing to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(iv), by failing to provide a pressure tank capacity of at least 20 gallons per connection; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of each of the facility's wells; PENALTY: $13,900; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201405372
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2014

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 9, 2015. 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 January 9, 2015. 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: GARRETT CONSTRUCTION COMPANY; DOCKET NUMBER: 2013-1921-MSW-E; TCEQ ID NUMBER: RN101735207; LOCATION: Garrett Road and Farm-to-Market Road 2725 near Ingleside, San Patricio County; TYPE OF FACILITY: construction business; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ Agreed Order Docket Number 2010-0809-MLM-E, Ordering Provision Number 2.b.i., by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $27,000; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(2) COMPANY: MIRANDO CITY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-2111-PWS-E; TCEQ ID NUMBER: RN101195360; LOCATION: Linder Avenue, Mirando City, Webb County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c), 30 TAC §290.45(b)(1)(C)(i), and TCEQ Agreed Order (AO) Docket Number 2011-0318-PWS-E, Ordering Provision Number 2.c.i., by failing to provide a well capacity of 0.6 gallons per minute per connection; THSC, §341.0315(c), 30 TAC §290.45(b)(1)(C)(iv); and TCEQ AO Docket Number 2011-0318-PWS-E, Ordering Provision Number 2.c.ii., by failing to provide an elevated storage capacity of 100 gallons per connection; THSC, §341.0315(c), 30 TAC §290.42(a)(1), and TCEQ AO Docket Number 2011-0318-PWS-E, Ordering Provision Number 2.c.iii., by failing to provide production capacity that meets or exceeds the facility's maximum daily demand; 30 TAC §290.46(f)(2), (3)(A)(i)(II), (ii), (B)(iii), and (E), by failing to maintain water works operation and maintenance records and make them available for review by commission personnel during the investigation; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's elevated storage tank; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can easily be located during emergencies; 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 92400025; PENALTY: $8,450; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Rocky Wadlington d/b/a Farrar Water Supply Corporation; DOCKET NUMBER: 2013-0347-MLM-E; TCEQ ID NUMBER: RN101441095; LOCATION: intersection of Limestone County Roads 846 and 848, Limestone County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing

to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tank (GST) annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank annually; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.43(c)(4), by failing to equip the GST with a water level indicator; 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.46(f)(2),(3)(A)(i)(III), and (ii), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals or more often as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; 30 TAC §290.121(a) and (b), by failing to develop, maintain and make available for executive director review upon request an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(w), by failing to have an internal procedure to notify the executive director by a toll-free reporting phone number immediately following certain events that may negatively impact the production or delivery of safe and adequate drinking water; 30 TAC §290.43(c)(3), by failing to provide the overflow on the GST with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence to protect the facility's well sites; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance to dust, insects, and other contaminants; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $5,367; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: SAVS Investments, Inc. d/b/a Friday's General Store; DOCKET NUMBER: 2012-2141-MLM-E; TCEQ ID NUMBER: RN104711163; LOCATION: 7678 East United States Highway 290, Johnson City, Blanco County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline with a public water system; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to obtain a UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; 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; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; Texas Health and Safety Code (THSC), §341.033(d), 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and TCEQ Agreed Order Docket Number 2010-1634-PWS-E, Ordering Provisions Numbers 2.a. through 2.c., by failing to collect routine distribution water samples for coliform analysis and failed to provide public notice of the failure to sample; THSC, §341.035(a), 30 TAC §290.39(e)(1), (h), and (c), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.d.ii. and f., by failing to submit engineering plans and specifications and obtain executive director approval prior to the construction of a new water system; THSC, §341.0315(c), 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.a.i. and b., by failing to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.110(c)(4)(A) and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.a.ii. and b.i., by failing to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days; THSC, §341.0315(c), 30 TAC §290.45(d)(2)(A)(ii), and TCEQ DO Docket Number 2011-0635-PWS-E, Ordering Provisions Numbers 3.d.i. and f., by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.106(e), by failing to report the results for triennial metals and minerals monitoring to the executive director; and 30 TAC §290.106(e), by failing to report the results of annual nitrate/nitrate monitoring to the executive director; PENALTY: $56,317; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239 3400.

TRD-201405373
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2014

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the

Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is January 9, 2015. 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.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 9, 2015. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in writing.

(1) COMPANY: CRYSTAL INTERNATIONAL, INC. d/b/a Fuel Stop; DOCKET NUMBER: 2013-2166-PST-E; TCEQ ID NUMBER: RN102848744; LOCATION: 5816 Keeneland Parkway, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1), 30 TAC §334.50(b)(1)(A), and TCEQ Agreed Order (AO) Docket Number 2011-1963-PST-E, Ordering Provision Number 2.b.i., 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), 30 TAC §334.50(b)(2), and TCEQ AO Docket Number 2011-1963-PST-E, Ordering Provision Number 2.b.i., by failing to provide release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10 and TCEQ AO Docket Number 2011-1963-PST-E, Ordering Provision Number 2.a., by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $91,128; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201405371
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 10, 2014

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Notice of Water Quality Applications

The following notices were issued on October 31, 2014 through November 7, 2014.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF PALACIOS has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010593001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 1800 feet west of the intersection of 12th Street and West Mosier Drive, Palacios, in Matagorda County, Texas 77465.

CITY OF COLUMBUS has applied for a renewal of TPDES Permit No. WQ0010025001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located at 100 Tait Street Columbus, approximately 0.2 mile north of Interstate Highway 10, on the west bank of the Colorado River, near the easterly end of McCormick Street, in the southeast corner of the City of Columbus, in Colorado County, Texas 78934.

CITY OF COLUMBUS has applied for a renewal of TPDES Permit No. WQ0010025002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 1147 Cross Roads Boulevard, Columbus, in Colorado County, Texas 78934.

CITY OF WEIMAR has applied for a renewal of TPDES Permit No. WQ0010311001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 806 East Charles Street, Weimar, in Colorado County, Texas 78962.

HORIZON REGIONAL MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010795001, which authorizes the discharge of treated domestic wastewater via Outfall 003 at an annual average flow not to exceed 3,000,000 gallons per day. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of 145 acres of golf course via Outfall 003 and 320 acres of pastureland via Outfall 002. The facility is located at 13223 Berkeley Drive, approximately 0.5 mile west of the intersection of Ashford Road and Farm-to-Market Road 1281 (Horizon Boulevard) and approximately 2 miles northeast of the intersection of Interstate Highway 10 and Farm-to-Market Road 1281 (Horizon Boulevard) in El Paso County, Texas 79928.

CITY OF MOUNT VERNON has applied for a renewal of TPDES Permit No. WQ0011122001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 20,000 gallons per day. The facility is located between State Highway 37 and Farm-to-Market Road 115, approximately 0.5 mile south of Interstate Highway 30 and below the Mount Vernon Municipal Reservoir Dam in Franklin County, Texas 75457.

GUADALUPE BLANCO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0011378001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located at 174 Century Ranch Road, approximately one mile east of Farm-to-Market Road 725, and 3.1 miles southeast of the intersection of Interstate Highway 35 and Farm-to-Market Road 725, New Braunfels, in Guadalupe County, Texas 78130.

BAO VU NGUYEN has applied for a renewal of TCEQ Permit No. WQ0011869001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 4,000 gallons per day via surface irrigation of 4.0 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on April 22, 2014. The wastewater treatment facility and disposal site are located at 5925 Hardy Weedon Road No. 1, College Station, approximately 1.5 miles northeast of the

intersection of Hardy Weedon Road and State Highway 30 in Brazos County, Texas 77845.

CORIX UTILITIES TEXAS INC has applied for a renewal of TPDES Permit No. WQ0011982001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 897 U.S. Highway 190 West, approximately 4,500 feet southeast of the intersection of Farm-to-Market Road 581 and U.S. Highway 190, west of Kirby Creek and south of the City of Lometa in Lampasas County, Texas 76853.

UA HOLDINGS 1994-5 LP has applied for a renewal of TPDES Permit No. WQ0012248001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 769 feet northeast of the intersection of Northbound State Highway 249 (Tomball Parkway) frontage road and Spring Cypress Plaza Drive in, Harris County, Texas 77377.

LAKE TRAVIS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0012920003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,500 gallons per day via public access subsurface drip irrigation system with a minimum area of 70,000 square feet. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site are located at 15600 Lariat Trail, Austin in Travis County, Texas 78734.

CITY OF RIO VISTA has applied for a new TPDES Permit No. WQ0013546002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013546001 which expired on March 1, 2014. The facility is located 2,400 feet south and 4,000 feet east of intersection of Farm-to-Market Road 916 and State Highway 174 in Johnson County, Texas 76093.

POLONIA WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014033001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 6,000 gallons per day. The facility is located east of Farm-to-Market Road 1854 at the intersection of Caldwell County Road 189 southeast of the community of Dale in Caldwell County, Texas 78616.

TCB RENTAL INC has applied for a renewal of TPDES Permit No. WQ0014725001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility will be located on the west side of Farm-to-Market Road 50, approximately 1.5 miles south of the intersection of Farm-to-Market Road 50 and Farm-to-Market Road 1361 in Burleson County, Texas 77879.

EARTH PROMISE has applied for a new TPDES Permit No. WQ0015250001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility will be located approximately 3,535 feet west-southwest of the intersection of County Road 2008 and County Road 2017, in Somervell County, Texas 76043.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201405392

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 12, 2014

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 6, 2014, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Citgo Refining and Chemicals Company, L.P.; SOAH Docket No. 582-13-5326; TCEQ Docket No. 2012-1799-AIR-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Citgo Refining and Chemicals Company, L.P. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas 78753.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Mehgan Taack, Office of the Chief Clerk, (512) 239-3300.

TRD-201405393

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 12, 2014

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective January 1, 2015.

The purpose of this amendment is to update the fee schedules in the current state plan by adjusting or implementing fees for:

2015 Annual Healthcare Common Procedure Coding System Update;

Clinical Diagnostic Laboratory Services;

Dental Services;

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Early and Periodic Screening, Diagnosis, and Treatment Services;

Home Health Services;

Indian Health Services; and

Physicians and Other Practitioners

These rate actions comply with applicable adjustments in response to direction from the Texas Legislature as set out in the 2012-2013 General Appropriations Act and the 2014-2015 General Appropriations Act, effective September 1, 2013. Within HHSC's portion of article II of the current appropriations act, Rider 51 in particular directs HHSC to reduce expenditures by, among other things, implementing certain payment adjustments. See General Appropriations Act, 83d Leg., R.S., art. II, rider 51, at II-100 to II-101, 2013 Tex. Gen. Laws ch. 1411 (Health & Hum. Servs. Section, Health & Hum. Servs. Comm'n);

General Appropriations Act, 82nd Leg., R.S., art. II, §16, at II-108, 2011 Tex. Gen. Laws ch. 1355 (Health & Hum. Servs. Section, Special Provisions Related to All Health & Hum. Servs. Agencies). All of the proposed adjustments are being made in accordance with 1 TAC §355.201.

The proposed amendment is estimated to result in an annual cost of $1,090,668 for federal fiscal year (FFY) 2015, consisting of $633,133 in federal funds and $457,535 in state general revenue. For FFY 2016, the estimated annual expenditure is $1,479,105, consisting of $845,013 in federal funds and $634,092 in state general revenue. For FFY 2017, the estimated annual expenditure is $1,540,328, consisting of $879,989 in federal funds and $660,339 in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 707-6071; by facsimile at (512) 730-7475; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201405390
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: November 10, 2014

♦ ♦ ♦

Request for Public Comment

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its estimate and methodology for determining the Temporary Assistance for Needy Families (TANF) Program caseload reduction credit for Federal Fiscal Year (FFY) 2015. HHSC will base the methodology on caseload reduction occurring from FFY 2005 to FFY 2014. This methodology and the resulting estimated caseload reduction credit will be submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, for approval.

The TANF caseload reduction credit gives a state credit for reducing its TANF caseload between a base year and a comparison year. To receive a caseload reduction credit, Section 407(b)(3) of the Social Security Act and Title 45 of the Code of Federal Regulations, Part 261, Subpart D, require a state to complete and submit a report that, among other things, describes the methodology and the supporting data that a state used to calculate its caseload reduction estimates. The state must provide the public with an opportunity to comment on the estimate and methodology. Accordingly, as the state agency that administers the TANF program in Texas, HHSC believes it is eligible for a caseload reduction credit and has developed the requisite estimate and methodology. As required, HHSC is providing the public with an opportunity for comment.

HHSC will post the methodology and the estimated caseload reduction credit on the HHSC website at http://www.hhsc.state.tx.us/research by November 24, 2014. Written or electronic copies of the methodology and estimate also can be obtained by contacting Ross McDonald, HHSC Texas Works Reporting Team Lead, by telephone at (512) 424-6843.

The public comment period begins November 24, 2014, and ends December 10, 2014. Comments must be submitted in writing to Texas Health and Human Services Commission, Strategic Decision Support, Attention: Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247. Comments also may be submitted electronically to Ross McDonald at ross.mcdonald@hhsc.state.tx.us.

TRD-201405336
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: November 7, 2014

♦ ♦ ♦

Houston-Galveston Area Council

Solicitation for Public Comment

Notice is hereby given that the Houston-Galveston Area Council (H-GAC) is seeking input on an amendment to the H-GAC Method of Distribution (MOD) for Round 2 of the Community Development Block Grant Disaster Recovery Program. The amendment regards the redistribution of Round 2 Disaster Recovery Non-Rental and Rental housing funds within the following counties: Brazoria, Chambers, Fort Bend, Matagorda, Montgomery, and Walker. Written and oral comments regarding the amendment will be taken at three (3) **public hearings** scheduled for the following locations:

Wednesday, November 19, 2014 at the H-GAC Offices, Houston, Texas; Wednesday, November 19, 2014 at Anahuac City Hall, Chambers County, and Thursday, November 20, 2014 at the Montgomery County Memorial Library (City of Conroe, TX).

The H-GAC Round 2 MOD amendment and exact times for the public hearings will be posted on or before Friday, November 14, 2014 by 6:00 p.m. on the Internet website www.h-gac.com/Ike. A hard copy of the amendment will be made available for public inspection and comment at the H-GAC reception area at 3555 Timmons, Suite 120, Houston, Texas 77027 throughout the comment period.

Additional written comments must be received by **4:00 p.m Friday, November 28, 2014.** Written comments can be sent via email to Miles.Arena@h-gac.com, mailed to H-GAC Attn: Miles G. Arena, Disaster Recovery Coordinator, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227 or hand-delivered to H-GAC, 3555 Timmons Lane, Suite 100, Houston, Texas 77027.

H-GAC will provide for reasonable accommodations for persons attending H-GAC functions. Requests from persons needing special accommodations should be received by H-GAC staff 24 hours prior to the function. The public hearings will be conducted in English; however, Spanish, Vietnamese and sign language interpreters can be available if request is received by H-GAC staff 24 hours prior to the function. For more information, please call Miles G. Arena at 832-681-2586 for assistance.

For more information about this notice, please call 832-681-2586.

Para mayor información acerca de este aviso, llame al 832-681-2586.

để biết thêm thông tin về nội dung này, hãy gọi số 832-681-2586.

TRD-201405403
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: November 13, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of USAGENCIES DIRECT INSURANCE COMPANY to AFFIRMATIVE DIRECT INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201405394
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 12, 2014

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Public Utility Commission of Texas

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 5, 2014, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109.

Docket Title and Number: Application of Renewable Power Direct, LLC for Retail Electric Provider Certification; Docket Number 43715.

Applicant's requested service area is defined by customers. In this application, Tenaska Power Services Co. is the customer.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 43715.

TRD-201405397
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 12, 2014

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 29, 2014, pursuant to the Texas Water Code.

Docket Style and Number: Application of Tow Village Water Systems and Corix Utilities (Texas) Inc. for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity in Burnet and Llano Counties, Docket Number 43670.

The Application: Tow Village Water Systems and Corix Utilities (Texas) Inc. filed an application for approval to sell the Tow Village and Bonanza Beach water systems (the Facilities). Corix will assume control of all system components and distribution systems for the Facilities. Tow Village seeks to cancel Certificate of Convenience and Necessity (CCN) number 11670.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 43670.

TRD-201405301
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Santa Rosa Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43692.

The Application: Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) filed an application with the commission for revisions to its Local Exchange Tariff. Santa Rosa proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $30,361.85 in gross annual intrastate revenues. The Applicant has 1,483 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by November 28, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by November 28, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43692.

TRD-201405326
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Community Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C.

Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43697.

The Application: Community Telephone Company (Community) filed an application with the commission for revisions to its Local Exchange Tariff. Community proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $7,648 in gross annual intrastate revenues. The Applicant has 1,305 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43697.

TRD-201405327
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Cameron Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43698.

The Application: Cameron Telephone Company (CTC) filed an application with the commission for revisions to its Local Exchange Tariff. CTC proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $5,016 in gross annual intrastate revenues. The Applicant has 418 access lines (residence and/or business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43698.

TRD-201405328
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Wes-Tex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43700.

The Application: Wes-Tex Telephone Cooperative, Inc. (Wes-Tex) filed an application with the commission for revisions to its Member Services Tariff. Wes-Tex proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $34,202 in gross annual intrastate revenues. The Applicant has 2,124 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43700.

TRD-201405329
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Electra Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43701.

The Application: Electra Telephone Company (Electra) filed an application with the commission for revisions to its Local Exchange Tariff. Electra proposed an effective date of December 1, 2014. The estimated

revenue increase to be recognized by the Applicant is $10,980 in gross annual intrastate revenues. The Applicant has 847 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43701.

TRD-201405330
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Tatum Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43702.

The Application: Tatum Telephone Company (Tatum) filed an application with the commission for revisions to its Local Exchange Tariff. Tatum proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $18,134 in gross annual intrastate revenues. The Applicant has 731 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43702.

TRD-201405331
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of South Plains Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43703.

The Application: South Plains Telephone Cooperative, Inc. (SPTC) filed an application with the commission for revisions to its Member Services Tariff. SPTC proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $74,266 in gross annual intrastate revenues. The Applicant has 3,777 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43703.

TRD-201405332
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Southwest Texas Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43706.

The Application: Southwest Texas Telephone Company (Southwest Texas) filed an application with the commission for revisions to its General Exchange Tariff. Southwest Texas proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $72,244.80 in gross annual intrastate revenues. The Applicant has 3443 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be dock-

eted. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43706.

TRD-201405333
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 4, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Riviera Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43714.

The Application: Riviera Telephone Company (Riviera) filed an application with the commission for revisions to its General Exchange Tariff. Riviera proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $10,799 in gross annual intrastate revenues. The Applicant has 1,012 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43714.

TRD-201405334
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Brazoria Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43699.

The Application: Brazoria Telephone Company (BTC) filed an application with the commission for revisions to its General Exchange Tariff. BTC proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $39,739 in gross annual intrastate revenues. The Applicant has 3,818 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43699.

TRD-201405338
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 5, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Mid-Plains Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43724.

The Application: Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains Rural) filed an application with the commission for revisions to its Local Exchange Tariff. Mid-Plains Rural proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $8,130 in gross annual intrastate revenues. The Applicant has 2,553 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 5, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 5, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43724.

TRD-201405339
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 7, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 3, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Big Bend Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43696.

The Application: Big Bend Telephone Company (Big Bend) filed an application with the commission for revisions to its Local Exchange Tariff. Big Bend proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $113,155 in gross annual intrastate revenues. The Applicant has 4,660 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43696.

TRD-201405388
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2014

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on November 6, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Colorado Valley Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Subst. R. §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 43736.

The Application: Colorado Valley Telephone Cooperative, Inc. (CVTC) filed an application with the commission for revisions to its General Exchange Tariff. CVTC proposed an effective date of December 1, 2014. The estimated revenue increase to be recognized by the Applicant is $77,513 in gross annual intrastate revenues. The Applicant has 5,402 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 1, 2014, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 1, 2014. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 43736.

TRD-201405389
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 10, 2014

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

Panola County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Architectural/Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional engineering design services for the current aviation project as described below.

Current Project: Panola County; TxDOT CSJ No.: 1519CARTH.

Scope: Provide engineering/design services to:

1. Rehabilitate and Remark Runway17-35

2. Rehabilitate Apron

3. Rehabilitate Hangar Access Taxiways

4. Rehabilitate Parallel and Cross Taxiways

The DBE goal for the design of the current project is 0%. The goal will be re-set for the construction phase. TxDOT Project Manager is Robert Johnson.

The following is a listing of proposed projects at the Panola County-Sharpe Field during the course of the next five years through multiple grants.

Future scope work items for engineering/design services within the next five years may include the following:

Install Fencing; Construct Hangar Access Taxiway; Construct Hangar

Panola County reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "Panola County-Sharpe Field." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **December 16, 2014,** 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Trudy Hill, Grant Manager.

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 to Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Trudy Hill, Grant Manager. For technical questions, please contact Robert Johnson, Project Manager.

TRD-201405340
Leonard Reese
Associate General Counsel
Texas Department of Transportation
Filed: November 7, 2014

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Aviation Division - Request for Qualifications for Professional Architectural/Engineering Services

The City of Edinburg, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Architectural/Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualification statements for professional engineering services described below:

Airport Sponsor: City of Edinburg; TxDOT CSJ No. 1521EDNBG;

Scope: Provide engineering/design services to:

1. construct a 12-unit T-hangar;
2. construct North Apron;
3. construct/expand Hangar Taxilane;
4. install emergency generator;
5. fill grass islands with pavement;
6. install new tie-downs; and
7. update Airport Layout Plan.

The HUB goal for the design phase is set at 15%. The goal will be re-set during the construction phase. The TxDOT Project Manager is Ed Mayle.

To assist in your qualification preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at http://www.txdot.gov/inside-txdot/division/aviation/projects.html by selecting "South Texas International Airport at Edinburg."

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at http://www.txdot.gov/inside-txdot/division/aviation/projects.html. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704, no later than 4:00 p.m. on December 16, 2014. Electronic facsimiles or forms sent by email will not be ac-

cepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

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 to Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Ed Mayle, Project Manager.

TRD-201405396
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 12, 2014

Angel Banda
6th Grade

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 39 (2014) is cited as follows: 39 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 "39 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 39 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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