TEXAS REGISTER

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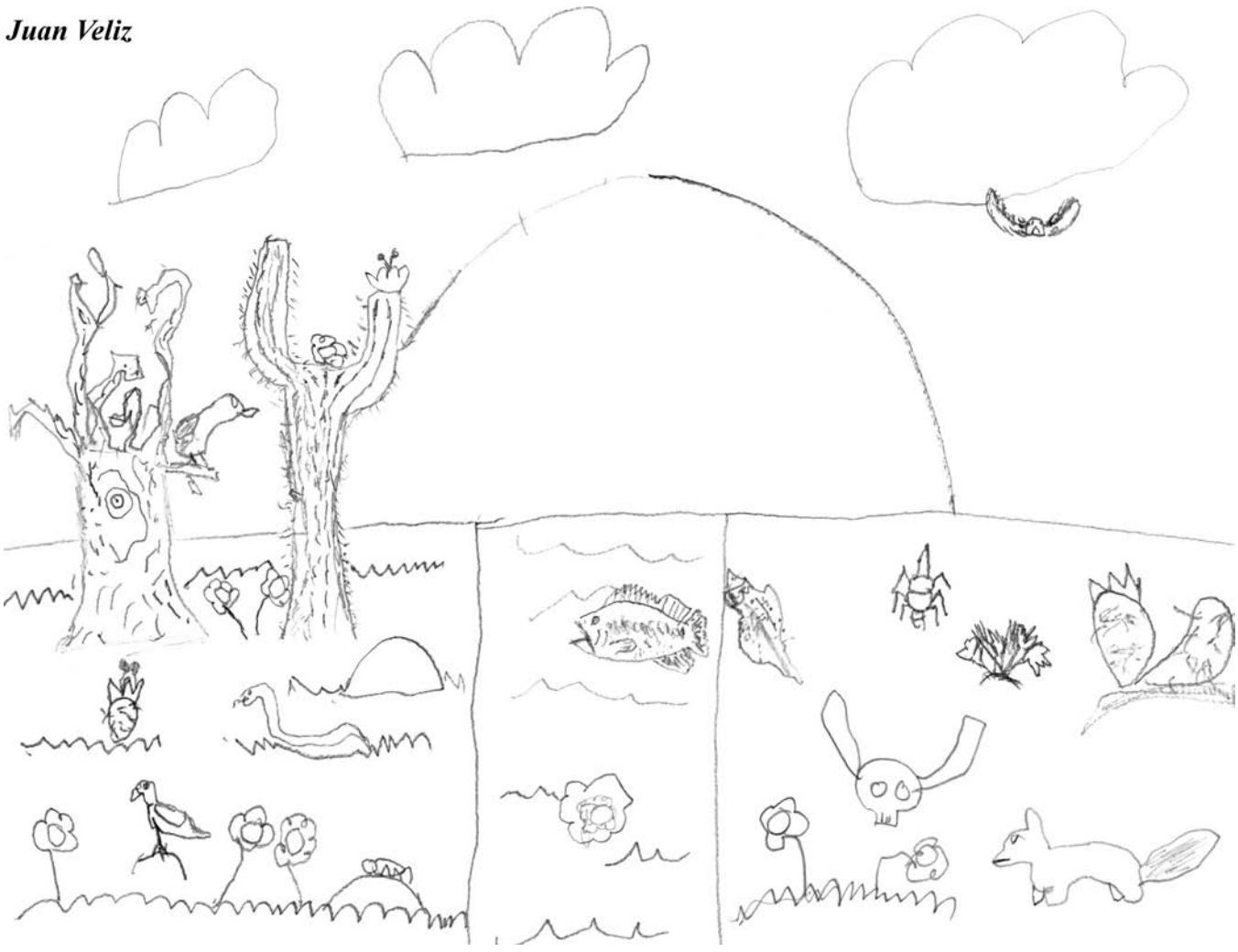
Juan Veliz



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

Texas Low-Level Radioactive Waste Disposal Compact Commission

Texas Parks and Wildlife Department

Public Utility Commission of Texas

Sul Ross State University

Texas Water Development Board

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 ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1226-GA

Requestor:

Ms. Sheryl Tavarez

Coke County Auditor

13 East 7th Street

Robert Lee, Texas 76945

Re: Validity of a salary increase for the sheriff that exceeded the amount listed in the initial public notice required by section 152.013 of the Local Government Code (RQ-1226-GA)

Briefs requested by November 4, 2014

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

TRD-201404821
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 15, 2014

♦ ♦ ♦

Opinions

Opinion No. GA-1084

The Honorable Joe R. Smith

Tyler County Criminal District Attorney

Courthouse Annex

100 West Bluff

Woodville, Texas 75979

Re: Authority of a municipality to sell real property including a building and improvements located in the middle of a city street (RQ-1196-GA)

S U M M A R Y

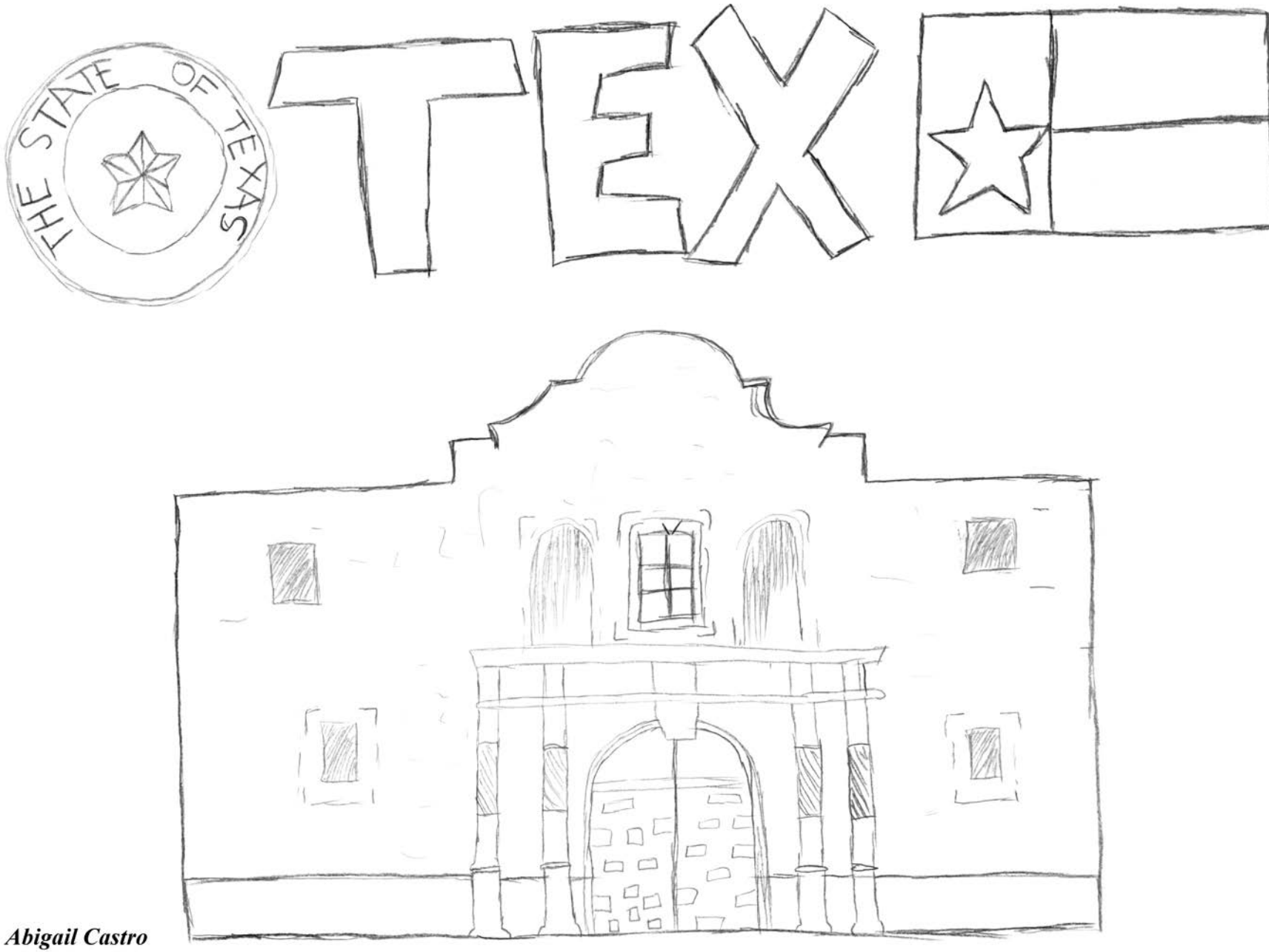
A Type-A municipality may sell a building located in the middle of a street only as authorized by the Texas Constitution and statutes. Generally, a municipality must sell its land or other real property interest by complying with statutory notice and bidding requirements. Whether a particular exception allows a general-law municipality to sell real property and interests to a private entity without following notice and bidding procedures will depend on the particular facts and circumstances of the property and the terms of the sale.

Article III, section 52(a) and article XI, section 3 of the Texas Constitution do not prohibit a municipality from selling a public property to a private entity provided the transaction serves a public purpose and the municipality receives a public benefit in return.

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

TRD-201404806
Katherine Cary
General Counsel
Office of the Attorney General
Filed: October 14, 2014

♦ ♦ ♦



Abigail Castro

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

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

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 3. CRIMINAL JUSTICE DIVISION

The Office of the Governor, Criminal Justice Division (CJD) proposes amendments to Title 1, Part 1, Chapter 3, §§3.3, 3.85, 3.2013, 3.2021, 3.2507, 3.2603, and 3.8305.

The proposed amendment of §3.3: (1) updates the definitions of "equipment", "OMB", and "program income" to conform with the definitions of those terms in the Federal Uniform Administrative Requirements (2 CFR Part 200); and (2) adds definitions of "computing devices", "indirect costs", "information technology systems", and "supplies", to conform with the definitions of those terms in the Federal Uniform Administrative Requirements.

The proposed amendment to §3.85 differentiates between indirect cost rates that are negotiated between the applicant and the Federal government, and those negotiated between the applicant and the state cognizant agency.

The proposed amendment to §3.2013 increases the amount above which a grantee must obtain approval from CJD before making a procurement. The rule increases the amount from $100,000 to $150,000. The proposed amendment aligns the rule with the updated requirements of the Federal Uniform Administrative Requirements and those of the U.S. Department of Justice's Office of Justice Programs.

The proposed amendment to §3.2021 adds "non-profit corporations" back into the list of applicants that must provide CJD with an approved resolution from their governing boards as part of the application process. The proposed amendment ensures that the governing boards of non-profit corporations are involved in the application process.

The proposed amendment to §3.2507 clarifies the language of the rule and conforms it with language in CJD's *Guide to Grants.*

The proposed amendment to §3.2603 updates: (1) the Federal citation referencing the revised Federal Uniform Administrative Requirements; and (2) the state citation to use a more general reference to the "State Single Audit requirements" because the Uniform Grant Management Standards (UGMS) are currently being revised and the term "State Single Audit Circular" may not be used in a revised version of UGMS.

The proposed amendment to §3.8305 adds additional authority granted to the Specialty Courts Advisory Council by the legislature during the last legislative session pursuant to Senate Bill 462.

Christopher Burnett, Executive Director of CJD, has determined that for the first five-year period following the amendment of these rules: (1) there will be no fiscal implications for state or local government as a result of amending these rules; and (2) the public benefit anticipated as a result of amending these rules will be more efficient processes and procedures. There will be no anticipated economic cost to persons or businesses resulting from amending these rules.

Comments on the proposed amendments may be submitted to Heather Morgan, Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919, Heather.Morgan@gov.state.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 GRANT PROGRAM PROVISIONS

1 TAC §3.3

The amendments to this rule are proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.3. Definitions.

(a) applicant: an agency or organization that has submitted a grant application or grant renewal documentation;

(b) approved budget categories: budget categories (including personnel, contractual and professional services, travel, equipment, construction, supplies and other direct operating expenses, and indirect costs) that contain a line item with a dollar amount greater than zero that is approved by CJD through a grant award or a budget adjustment;

(c) CJAC: Criminal Justice Advisory Committee, a component of a COG. A CJAC must have a multi-disciplinary representation of members from the region. This representation must contain members from the following groups: concerned citizens or parents, drug abuse prevention, education, juvenile justice, law enforcement, mental health, nonprofit organizations, prosecution/courts, and victim services. No single group may constitute more than one third of the CJAC;

(d) CJD: The Criminal Justice Division of the Office of the Governor or its designee;

(e) COD: The Compliance and Oversight Division of the Office of the Governor or its designee;

(f) COG: a regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Texas Local Government Code;

(g) computing devices: machines used to acquire, store, analyze, process, and publish data and other information electronically, including accessories (or "peripherals") for printing, transmitting and receiving, or storing electronic information;

(h) [~~(g)~~] condition of funding: a prerequisite placed on a grant because of a need for information, clarification, or submission of an outstanding requirement of the grant that may result in a hold being placed on the CJD-funded portion of a grant project;

(i) [~~(h)~~] equipment:

[~~(1)~~] [~~an article of non-expendable,~~] tangible personal property (including information technology systems) having a useful life of more than one year and a per unit [~~an~~] acquisition cost which equals or exceeds the lesser of the capitalization level established by the grantee for financial statement purposes or $5,000 [~~$1,000~~]; [~~or~~]

[~~(2) any of the following items with costs between $500 and $1,000: stereo systems, still and video cameras, facsimile machines, DVD players, VCRs and VCR/TV combinations, cellular and portable telephones, and computer systems.~~]

(j) [~~(i)~~] executive director: the executive director of CJD;

(k) [~~(j)~~] grant funds: CJD-funded and matching funds portions of a grant project;

(l) [~~(k)~~] grantee: an agency or organization that receives a grant award;

(m) indirect costs: those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved;

(n) information technology systems: computing devices, ancillary equipment, software, firmware, and similar procedures, services (including support services), and related resources;

(o) [~~(l)~~] liquidation date: the date specified in an original grant award or a subsequent grant adjustment upon which a grantee must expend all outstanding liabilities;

(p) [~~(m)~~] matching funds: the grantee's share of the project costs. Matching funds may either be cash or in-kind. Cash match includes actual cash spent by the grantee and must have a cost relationship to the award that is being matched. In-kind match includes the value of donated services. An applicant's use of matching funds must comply with the same statutes, rules, regulations, and guidelines applicable to the use of the CJD-funded portion of a grant project;

(q) [~~(n)~~] OMB: the Executive Office of the President of the United States, [~~The~~] Office of Management and Budget;

(r) [~~(o)~~] program income: gross income earned by the grantee that is directly generated by a supported activity or earned as a result of the award during the [~~funding~~] period of performance. [~~as a direct result of the award. "Direct result" is defined as a specific act or set of activities that are directly attributable to grant funds and that are directly related to the objectives of the project.~~] Program income includes, but is not limited to, forfeitures, fees for services performed, the use of rental or real or personal property acquired under an award, the sale of commodities or items fabricated under an award, and license fees[~~, cash contributions, donations, restitution, interest income,~~] and royalties on patents and copyrights. Interest earned on advances of grant funds is not program income. Except otherwise provided in applicable law, regulations or the terms and conditions of the award, program income does not include rebates, credits, discounts and interest earned on any of them;

(s) [~~(p)~~] RFA: Request for Applications, published in the *Texas Register* by CJD; [~~and~~]

(t) supplies: all tangible personal property other than those described in accordance with §3.3(i) of this chapter. A computing device is a supply if the acquisition cost is less than the lesser of the capitalizations level established by the grantee for financial statement purposes or $5,000, regardless of the length of its useful life; and

(u) [~~(q)~~] UGMS: the Uniform Grant Management Standards.

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

Filed with the Office of the Secretary of State on October 13, 2014.

TRD-201404797
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

1 TAC §3.85

The amendment is proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed amendment implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.85. Indirect Costs.

[~~(a) CJD may approve indirect costs in the CJD-funded portion of the grant project in an amount not to exceed two percent of the CJD-approved direct costs, unless the grantee has an approved cost-allocation plan.~~]

(a) [~~(b)~~] If the applicant has an approved federally recognized indirect cost rate negotiated between the applicant and the Federal government [~~a cost-allocation plan~~] and wishes to charge indirect costs to [~~the CJD-funded or cash match portion of~~] the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application to CJD. [~~CJD will review the documentation and will determine an appropriate indirect cost rate for the project.~~]

(b) If the applicant has an approved indirect cost rate negotiated between the applicant and its state cognizant agency and wishes to charge indirect costs to the grant, the applicant shall identify the indirect cost rate and provide supporting documentation as part of the application to CJD.

(c) If no approved federal or state indirect cost rate exists, CJD may approve indirect costs in the grant project in an amount not to exceed two percent of the approved direct costs.

(d) [~~(c)~~] Unless otherwise specified, indirect costs are allowable under CJD grants in accordance with applicable state and federal guidelines.

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

Filed with the Office of the Secretary of State on October 13, 2014.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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SUBCHAPTER D. CONDITIONS OF GRANT FUNDING

1 TAC §3.2013, §3.2021

The amendments are proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed amendments implement §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of these rules.

§3.2013. Pre-Approval Requirements for Procurement.

(a) A grantee must submit a CJD-prescribed Procurement Questionnaire when any procurement is expected to exceed $150,000 [~~$100,000~~] or upon CJD request. CJD may also request all related procurement documentation, such as requests for proposals, invitations for bids, or independent cost estimates.

(b) Grantees may not divide purchases or contracts to avoid the requirements of this section. For purposes of determining compliance, CJD will consider groups of contracts with a single vendor or groups of purchases for the same or similar items as a single procurement.

§3.2021. Resolutions.

Applications from non-profit corporations, local units of governments and other political subdivisions must include a resolution that contains the following:

(1) authorization for the submission of the application to CJD that clearly identifies the project for which funding is requested;

(2) a commitment to provide for all applicable matching funds;

(3) a designation of the name or title of an authorized official who is given the power to apply for, accept, reject, alter, or terminate a grant (if this designation changes during the grant period, a new resolution must be submitted to CJD); and

(4) a written assurance that, in the event of loss or misuse of grant funds, the governing body will return all funds to CJD.

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

Filed with the Office of the Secretary of State on October 13, 2014.

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David Zimmerman
Assistant General Counsel
Office of the Governor
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For further information, please call: (512) 463-1919

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SUBCHAPTER E. ADMINISTERING GRANTS

1 TAC §3.2507

The amendments are proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.2507. Financial Status Reports.

(a) Each grantee must submit financial status reports to CJD. CJD will provide the appropriate forms and instructions for the reports along with deadlines for their submission.

(b) A [~~grantee may submit~~] financial status report reflecting cumulative expenditures from the start of the grant may be submitted as often as monthly but must be submitted at least quarterly [~~reports to generate reimbursement no more than once a month~~]. Grantees may only request an advance payment during the first month of the grant period to cover the first month's expenses.

(c) Grantees must ensure that CJD receives their final financial status report no later than the liquidation date or funds will lapse and revert to the grantor agency. If grant funds are on hold for any reason, these funds will lapse on the liquidation date and the grantee cannot recover them. CJD will not make payments to grantees that submit their final financial status report after the liquidation date.

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

Filed with the Office of the Secretary of State on October 13, 2014.

TRD-201404798
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER F. PROGRAM MONITORING AND AUDITS

1 TAC §3.2603

The amendments are proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.2603. Audits Not Performed by CJD or COD.

(a) Grantees must have audits performed in accordance with the requirements set forth in 2 CFR Part 200, Subpart F-Audit Requirements [~~OMB Circular No. A-133~~] and the State Single Audit requirements [~~Circular~~] issued under UGMS.

(b) Grantees must submit to COD copies of the results of any single audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements [~~OMB Circular No. A-133~~] or in accordance with the State Single Audit requirements [~~Circular~~] issued under UGMS. Grantees must ensure that single audit results, including the grantee's response and corrective action plan, if applicable, are submitted to COD within 30 calendar days after the grantee receives the audit results or nine months after the end of the audit period, whichever is earlier.

(c) All other audits performed by auditors independent of CJD or COD must be maintained at the grantee's administrative offices and be made available upon request by CJD or COD. Grantees must notify CJD of any audit results that may adversely impact grant funds.

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

Filed with the Office of the Secretary of State on October 13, 2014.

TRD-201404799
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 463-1919

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SUBCHAPTER G. CRIMINAL JUSTICE DIVISION BOARDS

DIVISION 3. SPECIALTY COURTS ADVISORY COUNCIL

1 TAC §3.8305

The amendments are proposed under §772.006(a)(10) of the Government Code, which authorizes CJD to adopt rules and procedures as necessary to carry out its duties.

The proposed rule implements §772.006(a) of the Government Code, which requires CJD to administer state and federal grant programs, and to assist the governor in developing policies and programs for improving the coordination, administration and effectiveness of the criminal justice system.

No other statutes, articles, or codes are affected by the amendment of this rule.

§3.8305. General Powers.

Pursuant to §772.0061 of the Texas Government Code, the Council is authorized to:

(1) evaluate applications for grant funding for specialty courts in this state and to make funding recommendations to CJD; and[.]

(2) make recommendations to CJD regarding best practices for specialty courts established under Chapters 122, 123, 124, or 125 of the Texas Government Code, or former law.

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

Filed with the Office of the Secretary of State on October 13, 2014.

TRD-201404800
David Zimmerman
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 463-1919

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1005

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1005, concerning unauthorized charges.

Background and Justification

HHSC proposes to amend §354.1005, Unauthorized Charges, to clarify that a Medicaid provider may not charge a Medicaid recipient for functions incidental to the provision of a covered service, including the completion of a health assessment form or for a copy of a medical record, unless otherwise provided in the rule.

According to federal regulation, Medicaid providers must accept as payment in full for covered services the amount paid by Medicaid plus any cost-sharing required of the Medicaid recipient (42 C.F.R. §447.15). Accordingly, this proposed amendment clari-

fies that a Medicaid provider generally may not charge any Medicaid recipient for completing a health assessment form or for providing a copy of a medical record. By contrast, a provider may charge the Medicaid recipient, in accordance with other state law, for a record that is for the Medicaid recipient's personal use if the provider has already provided the Medicaid recipient one free copy of a record, containing the same information, within one year of the request for an additional copy.

Section-by-Section Summary

Proposed amended §354.1005(a) clarifies that a Medicaid provider may not charge a Medicaid recipient for a covered service or any function incidental to the provision of a covered service.

Proposed new §354.1005(c) clarifies what is considered a function incidental to the provision of a covered service for purposes of subsection (a).

Proposed new §354.1005(d) clarifies that a Medicaid provider may charge for a medical record if the provider has provided the eligible recipient with one free copy of the record within a one-year period, and the record has not been amended, supplemented, changed, or corrected.

Proposed new §354.1005(e) describes what is considered a medical record for the purposes of this section.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect, there will be no fiscal impact to revenues or expenditures of state or local governments. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment or local economies.

Small and Micro-business Impact Analysis

HHSC has determined that there will be no effect on small businesses or micro businesses to comply with the amendment, as they will not be required to alter their business practices as a result of the amended rule.

Public Benefit

Chris Traylor, Chief Deputy Commissioner, has determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed amended rule will be that state Medicaid rules regarding allowable charges for medical records will be clearly defined.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Jimmy Perez, Health and Human Services Commission, Medicaid/CHIP Policy Development, MC-H310, Brown Heatly Building, 4900 N. Lamar Blvd., Austin, TX 78751; by fax to (512) 730-7472; or by e-mail to Jimmy.Perez@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register.*

Statutory Authority

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

The amendment is consistent with 42 C.F.R. §447.15.

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

§354.1005. Unauthorized Charges.

(a) An eligible provider must certify that no charges beyond reimbursement paid under the Texas Medicaid Program for a covered service, or any function incidental to the provision of a covered service, have [~~has~~] been, or will be, billed to an eligible recipient.

(b) Within the provisions cited in §354.1131 of this chapter (relating to Payments to Eligible Providers), an eligible provider may not bill or take other recourse against an eligible recipient for claims denied as a result of an error attributed to the provider.

(c) For purposes of subsection (a) of this section, functions incidental to the provision of a covered service include:

(1) signing, completing, or providing a copy of a health assessment form, such as a physical examination form required for the eligible recipient's enrollment in school or participation in school or other activities;

(2) providing a copy of a medical record requested:

(A) by or on behalf of any health care practitioner for purposes of medical care or treatment of the eligible recipient;

(B) under Texas Health and Safety Code §161.202;

(C) as a supplement to a form described in paragraph (1) of this subsection; or

(D) by an eligible recipient, for any reason, for the first time in a one-year period; and

(3) providing a copy of any subsequent amendment, supplement, or correction to a medical record under paragraph (2) of this subsection.

(d) An eligible provider may bill or otherwise charge an eligible recipient for providing a copy of a medical record not described in subsection (c)(2) of this section if the:

(1) eligible provider provided one copy of the medical record at no charge to the eligible recipient within one year before the request for an additional copy;

(2) medical record described in paragraph (1) of this subsection has not been amended, supplemented, changed, or corrected

and contains the same documentation as the medical record requested under this subsection; and

(3) provider complies with state and federal law, including 22 TAC §165.2 (relating to Medical Record Release and Charges) and 45 C.F.R. §164.524.

(e) For purposes of this section, "medical record" includes a record with the elements described in 22 TAC §165.1(a) (relating to Medical Records). The term also includes a copy of a medical record created by another health care practitioner and in the possession of the eligible provider to whom a request for release of records has been made.

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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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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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

The Texas Department of Agriculture (department) proposes the repeal of 4 TAC Chapter 30, Community Development, in its entirety and new Chapter 30, Subchapters A and B. Specifically, the department proposes the repeal of Subchapter A, Texas Community Development Program, Division 1, §§30.1 - 30.11; and Division 2, §30.41; Subchapter B, State Office of Rural Health, Division 1, §§30.50 - 30.59; Division 2, §§30.70 - 30.74; Division 3, §§30.80 - 30.88; Division 4, §§30.90 - 30.103; Division 5, §§30.110 - 30.120; Division 6, §§30.130 - 30.137; Division 7, §§30.140 - 30.143; Division 8, §§30.150 - 30.154; Division 9, §§30.160 - 30.166; Division 10, §§30.170 - 30.172; and Division 11, §§30.180 - 30.185. In conjunction with these proposed repeals, new divisions and sections are also proposed in this issue of the *Texas Register.*

The repeal of Subchapter A, Divisions 1 and 2, is necessary because the entire set of rules have been reformatted and renumbered. The department has determined that due to the extensive reorganization of Subchapter A, repeal of the entire subchapter and replacement with new rules is more efficient than proposing numerous amendments to make the required changes. The proposed rule actions will allow the department to make changes to existing provisions to ensure compliance with all statutory requirements, formalize existing policy and guidelines, reorganize rules in a more easily understandable and comprehensive format, and include revisions of necessary policy and administrative changes to further enhance operations.

The department proposes the repeals and new rules to reorganize Subchapter A into the following five divisions: Division 1, General Provisions; Division 2, Application Information; Division 3, Administration of Program Funds; Division 4, Awards and Contract Administration; and Division 5, Reallocation of Program Funds.

The proposed new rules make changes to application requirements and selection criteria for each funding category under the Texas Community Development Block Grant (TxCDBG) Program to conform to the proposed TxCDBG Action Plan, to make the application process more efficient, and to make the selection criteria more consistent with the overall goals and objectives of the TxCDBG Program. Additionally, in order to make the rules more concise and enable readers to easily locate program specific requirements, the proposed rules remove detailed and lengthy application and scoring information and refer readers to the applicable funding category's current application guide available on the department's website.

Proposed new Division 1, General Provisions, §§30.1 - 30.8, outlines the TxCDBG program objectives, defines important terms and phrases for the subchapter, describes the department's administrative appeals process, and provides other general provisions applicable to the TxCDBG Program, including an overview of TxCDBG funding categories and provisions related to conflict of interest and document retention.

Proposed new Division 2, Application Information, §§30.20 - 30.31, details uniform application and eligibility requirements applicable to all TxCDBG funding categories, clarifies citizen participation and public hearing requirements for applicants, and provides the bases for withdrawal of awards and penalties for providing false information in an application.

Proposed new Division 3, Administration of Program Funds, §§30.50 - 30.64, outlines selection criteria and specific requirements applicable to each TxCDBG program fund, including application cycles and limits on awards, if applicable.

Proposed new Division 4, Awards and Contract Administration, §§30.80 - 30.84, provides mandatory training requirements for contract administrators, clarifies the role and responsibilities of a third party administrator, and puts into rule current agency policy regarding enforcement actions which the department may take in the event a contractor fails to meet federal, state, local or contract requirements.

Proposed new Division 5, Reallocation of Program Funds, §§30.100 - 30.103, eliminates the marginal funding pool and makes changes to the reallocation and use of deobligated funds, unobligated funds, and program income.

The repeal of Subchapter B, Divisions 1 - 9, is necessary because the entire set of rules have been reformatted and renumbered. The department has determined that due to the extensive reorganization of Subchapter B, repeal of the entire subchapter and replacement with new rules is more efficient than proposing numerous amendments to make the required changes.

The repeal of Subchapter B, Division 10, is necessary because the critical access hospital board of trustee continuing education program has concluded and is no longer administered by the department.

The repeal of Subchapter B, Division 11, is necessary because the rural health information technology program has concluded and is no longer administered by the department.

The department proposes the repeals and new rules to reorganize Subchapter B into the following ten divisions: Division 1, General Provisions; Division 2, Outstanding Rural Scholar

Recognition Program; Division 3, Medically Underserved Community-State Matching Incentive Program; Division 4, Texas Health Service Corps Program; Division 5, Rural Health Facility Capital Improvement Program; Division 6, Designation of a Hospital as a Rural Hospital; Division 7, Rural Communities Health Care Investment Program; Division 8, Rural Physician Relief Program; Division 9, Rural Technology Center Grant Program; and Division 10, Rural Physician Assistant Loan Reimbursement Program.

The proposed new rules in Subchapter B make changes to existing provisions to conform the rules to current policy and guidelines, remove detailed and lengthy application and selection information to make the rules more concise, include revisions of necessary policy and administrative changes to further enhance operations, and refer readers to the applicable application guidelines for program specific requirements.

Proposed new Division 1, which consists of §30.120 and §30.121, defines important terms and phrases for the subchapter. In the current rules, each division includes a section for definitions of terms applicable to the specific title. Proposed new Division 1 will include all definitions of terms for the subchapter and removes definitions of terms already defined in Chapter 487 of the Texas Government Code.

Proposed new Division 2, which consists of §§30.140 - 30.148, describes general application and eligibility criteria for individuals to qualify for a forgivable loan award under the Outstanding Rural Scholar Recognition Program and includes provisions relating to contract requirements, conditions of award, and repayment obligations for breach of contract. Proposed new Division 2 removes unnecessary provisions that simply restate the law.

Proposed new Division 3, which consists of §§30.160 - 30.168, describes general application and eligibility criteria for physicians to qualify for assistance under the Medically Underserved Community-State Matching Incentive Program, describes the department's administrative appeals process for award denials, and includes provisions relating to contract requirements, conditions of award, and penalties for breach of contract.

Proposed new Division 4, which consists of §§30.180 - 30.185, describes general application, eligibility, and registration requirements for resident physicians to qualify for a stipend under the Texas Health Service Corps Program and includes provisions relating to conditions of award and penalties for breach of contract. Proposed new Division 4 removes unnecessary provisions that simply restate the law.

Proposed new Division 5, which consists of §§30.200 - 30.203, describes general application and eligibility criteria for public and non-profit hospitals located in a rural county in Texas to qualify for assistance under the Rural Health Facility Capital Improvement Program and includes provisions relating to conditions of award. Proposed new Division 5 removes unnecessary provisions that simply restate the law.

Proposed new Division 6, which consists of §§30.220 - 30.222, describes the department's procedures for designating a hospital as a rural hospital in order for the hospital to qualify for assistance under certain federal programs.

Proposed new Division 7, which consists of §§30.240 - 30.244, describes general application and eligibility criteria for health professionals in medically underserved areas to qualify for assistance under the Rural Communities Health Care Investment Program, adds limits to awards and a requirement that grant recipients begin working in a qualifying community before award funds will be released, and includes provisions relating to contract requirements, conditions of award, and penalties for breach of contract.

New Division 8, which consists of §§30.260 - 30.262, describes general application and eligibility criteria for rural physicians to qualify for assistance under the Rural Physician Relief Program. Proposed new Division 8 removes unnecessary provisions that simply restate the law.

New Division 9, which consists of §§30.280 - 30.283, describes general application and eligibility criteria for public institutions of higher education, public high schools, and governmental entities located in a rural county in Texas to qualify for assistance under the Rural Technology Center Grant Program. Proposed new Division 9 removes unnecessary provisions that simply restate the law.

New Division 10, which consists of §§30.300 - 30.302, describes general application and eligibility criteria for physician assistants in rural health professional shortage areas and medically underserved areas in Texas to qualify for assistance under the Rural Physician Assistant Loan Reimbursement Program.

Bryan Daniel, Chief Administrator for Trade and Business Development, has determined that for the first five years the repeals and new sections are in effect, enforcing or administering the new sections and repeals will not have foreseeable implications relating to costs or revenues of state or local governments.

Mr. Daniel has also determined that, for each year of the first five years the repeals and new sections are in effect, the public benefit anticipated as a result of enforcing the new sections and repeals will be clarification regarding application and eligibility requirements and elimination of confusion concerning the department's rules. There will be no adverse economic effect on micro-businesses, small businesses or individuals who are required to comply with the new rules and repeals. Therefore, no regulatory flexibility analysis is necessary.

Written comments on the proposal will be submitted for 30 days following publication and may be submitted to Bryan Daniel, Trade and Business Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT PROGRAM

DIVISION 1. ALLOCATION OF PROGRAM FUNDS

4 TAC §§30.1 - 30.11

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

The repeal of Subchapter A, Division 1, Allocation of Program Funds, §§30.1 - 30.11, is proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.1. General Provisions.

§30.2. Community Development Fund.

§30.3. Planning/Capacity Building Fund.

§30.4. Disaster Relief Fund.

§30.5. Urgent Need Fund.

§30.6. Texas Capital Fund.

§30.7. Regional Review Committees.

§30.8. Colonia Fund.

§30.9. Small Town Environment Program Fund.

§30.10. Renewable Energy Demonstration Pilot Program.

§30.11. Community Facilities Fund.

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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DIVISION 2. CONTRACT ADMINISTRATION

4 TAC §30.41

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

The repeal of Subchapter A, Division 2, Contract Administration, §30.41, is proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.41. Uniform Administrative 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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General Counsel
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SUBCHAPTER B. STATE OFFICE OF RURAL HEALTH

DIVISION 1. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

4 TAC §§30.50 - 30.59

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

The repeal of Subchapter B, Division 1, §§30.50 - 30.59, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.50. Purpose, Administration, and Delegation of Powers and Duties.

§30.51. Definitions.

§30.52. Selection Committee.

§30.53. Requirements for Recognition.

§30.54. Requirements for Forgiveness Loan.

§30.55. Breach of Contract.

§30.56. Repayment.

§30.57. Enforcement of Collection.

§30.58. Cancellations and Postponements.

§30.59. Dissemination of Program Information, Tracking and Reports.

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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DIVISION 2. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

4 TAC §§30.70 - 30.74

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

The repeal of Subchapter B, Division 2, §§30.70 - 30.74, is proposed under Texas Government Code §487.051, which provides

the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.70. Purpose, Administration and Delegation of Powers and Duties.
§30.71. Definitions.
§30.72. Dissemination of Information.
§30.73. Requirements for an Eligible Educational Loan, an Eligible Lender or Holder, and an Eligible Physician Assistant.
§30.74. Application Process, Recipient Selection and Reimbursement of Educational Loans.

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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DIVISION 3. TEXAS HEALTH SERVICE CORPS PROGRAM

4 TAC §§30.80 - 30.88

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

The repeal of Subchapter B, Division 3, §§30.80 - 30.88, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.80. Purpose, Administration, and Delegation of Powers and Duties.
§30.81. Definitions.
§30.82. Dissemination of Information, Research, Data Collection, and Reports.
§30.83. Requirements for Medically Underserved Communities.
§30.84. Requirements for Registering Eligible Resident Physicians.
§30.85. Matching Eligible Communities with Eligible Resident Physicians.
§30.86. Contractual Requirements for Matched Communities and Resident Physicians.
§30.87. Awarded Stipends.
§30.88. Provision for Effective and Efficient Administration of the Program.

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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DIVISION 4. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

4 TAC §§30.90 - 30.103

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

The repeal of Subchapter B, Division 4, §§30.90 - 30.103, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.90. Introduction.
§30.91. Definitions.
§30.92. Eligibility Criteria for a Contributing Community.
§30.93. Physician Eligibility Criteria.
§30.94. Procedures to Apply for Funds.
§30.95. Application Requirements.
§30.96. Evaluation of Application.
§30.97. Contract Award.
§30.98. Methodology for Prioritizing Neediest Communities.
§30.99. Contribution Procedures.
§30.100. Contract.
§30.101. Funding Allocation Procedure.
§30.102. Breach of Contract.
§30.103. Reporting and Monitoring.

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
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DIVISION 5. PERMANENT FUND FOR RURAL HEALTH FACILITY CAPITAL IMPROVEMENT

4 TAC §§30.110 - 30.120

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

The repeal of Subchapter B, Division 5, §§30.110 - 30.120, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.110. Purpose.

§30.111. Definitions.

§30.112. Sources and Allocation of Funds.

§30.113. Eligibility for Grants, Loans, and Loan Guarantees.

§30.114. Requirements for Grants, Loans, and Loan Guarantees.

§30.115. Procedures for Grants, Loans, and Loan Guarantee Announcements.

§30.116. Procedures for Grants, Loans, and Loan Guarantee Applications.

§30.117. Competitive Review Process.

§30.118. Selection Criteria.

§30.119. Project Approval.

§30.120. Continuation Funding.

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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DIVISION 6. RURAL TECHNOLOGY CENTER GRANT PROGRAM

4 TAC §§30.130 - 30.137

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

The repeal of Subchapter B, Division 6, §§30.130 - 30.137, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.130. Definitions.

§30.131. Purpose and Goal.

§30.132. Administration of the Program.

§30.133. Eligibility Criteria for Grant Applicants.

§30.134. Grant Application Procedures.

§30.135. Guidelines Relating to Grant Amounts.

§30.136. Contract.

§30.137. Monitoring, Reporting, and Compliance.

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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DIVISION 7. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

4 TAC §§30.140 - 30.143

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

The repeal of Subchapter B, Division 7, §§30.140 - 30.143, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.140. Purpose.

§30.141. Definitions.

§30.142. Designation Criteria.

§30.143. Procedures for Designation.

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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DIVISION 8. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

4 TAC §§30.150 - 30.154

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

The repeal of Subchapter B, Division 8, §§30.150 - 30.154, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.150. Definition of Terms.
§30.151. The Purpose, Administration, and Duties of the Rural Communities Health Care Investment Program.
§30.152. Administration and Use of Funds.
§30.153. Contracts.
§30.154. Advisory Committee.

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
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DIVISION 9. RURAL PHYSICIAN RELIEF PROGRAM

4 TAC §§30.160 - 30.166

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

The repeal of Subchapter B, Division 9, §§30.160 - 30.166, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.160. Purpose, Administration and Delegation of Powers and Duties.
§30.161. Definitions.
§30.162. Administration and Use of Funds.
§30.163. Prioritizing Assignment of Relief Physicians.
§30.164. Relief Physician Recruitment.
§30.165. Advisory Committee.
§30.166. Requirements for Providers Requesting Relief 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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DIVISION 10. CRITICAL ACCESS HOSPITAL BOARD OF TRUSTEE CONTINUING EDUCATION PROGRAM

4 TAC §§30.170 - 30.172

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

The repeal of Subchapter B, Division 10, §§30.170 - 30.172, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.170. Purpose, Administration, and Delegation of Powers and Duties.
§30.171. Definitions.
§30.172. Recommendations for Critical Access Hospital Board of Trustee Members.

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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DIVISION 11. RURAL HEALTH INFORMATION TECHNOLOGY PROGRAM

4 TAC §§30.180 - 30.185

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

The repeal of Subchapter B, Division 11, §§30.180 - 30.185, is proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.180. Definitions.

§30.181. Purpose and Goal.

§30.182. Administration of the Program.

§30.183. Eligibility Criteria for Grant Applicants.

§30.184. Application Procedures.

§30.185. Monitoring, Reporting and Compliance.

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 A. TEXAS COMMUNITY DEVELOPMENT PROGRAM
DIVISION 1. GENERAL PROVISIONS

4 TAC §§30.1 - 30.8

New Subchapter A, Division 1, General Provisions, §§30.1 - 30.8 are proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.1. Applicable Law.

(a) Administration of the Texas Community Development Block Grant (TxCDBG) Program is in accordance with federal laws and regulations specified by the Housing and Community Development Act of 1974, as amended (42 USC §5301 et seq.), and federal Community Development Block Grant Program regulations in 24 CFR Part 570.

(b) This subchapter applies to all communities that apply for or have been awarded TxCDBG funds by the department.

(c) Grant contracts shall be administered in accordance with the Uniform Grant Management Standards (UGMS) adopted by the Office of the Comptroller in 34 TAC Part 1, Chapter 20, Subchapter I, unless a provision in UGMS is inconsistent or conflicts with the applicable federal standard set out in 2 CFR Part 200, the Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards, in which case the federal standard shall apply.

§30.2. Definitions and Abbreviations.

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

(1) CFR--Code of Federal Regulations.

(2) Colonia--Any identifiable unincorporated community that is within 150 miles of the border between the United States and Mexico; is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990).

(3) Commissioner--The Commissioner of the Texas Department of Agriculture.

(4) Community--Any city, county, town, township, village or other general purpose political subdivision of the state.

(5) Contract--A written TxCDBG grant agreement, including all amendments thereto, executed by the department and contractor.

(6) Contractor--A community with which the department has executed a contract under this chapter.

(7) Department--Texas Department of Agriculture, Office of Rural Affairs, including the staff of the department.

(8) HUD--United States Department of Housing and Urban Development.

(9) Low and moderate income (LMI) persons--Families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by HUD.

(10) Non-entitlement area--An area which is not a metropolitan city or part of an urban county, as defined in 42 USC §5302.

(11) Poverty--The current official poverty level established by the Director of the Federal Office of Management and Budget.

(12) Regional review committee (RRC)--A commission established in each of the 24 state planning regions for purposes of regional review of Community Development Fund applications.

(13) TxCDBG--Texas Community Development Block Grant programs and funds administered by the department.

§30.3. Program Overview.

(a) Fund categories. TxCDBG Program assistance is available through the following seven fund categories.

(1) Community Development (CD) Fund provides assistance for public facilities, basic infrastructure projects such as sewer or water improvements, street and drainage improvements, and housing activities, or other eligible activities as specified by the department.

(2) Texas Capital Fund (TCF) is designed to support rural business development, retention and expansion by providing grants and/or loans for real estate or infrastructure development, or the elimination of deteriorated conditions. TCF is composed of four programs:

(A) Real Estate Program provides grants and/or loans to purchase, construct, or rehabilitate real estate that is wholly or partially owned by a community and leased to a specific benefiting business for the purpose of creating or retaining permanent jobs in primarily rural communities;

(B) Infrastructure Development Program provides grants and/or loans for infrastructure development, such as construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs, for the purpose of creating or retaining permanent jobs in primarily rural communities;

(C) Downtown Revitalization Program (DRP) provides grants for public infrastructure to foster and stimulate economic development in rural downtown areas;

(D) Main Street Improvements Program is designed to aid in the prevention or elimination of slum or blighted areas and provides assistance to expand or enhance public infrastructure in historic main street areas.

(3) Colonia Fund is available for projects in severely distressed unincorporated areas which meet the definition of a colonia. The Colonia Fund is divided into four programs:

(A) Colonia Fund Construction (CFC) program is available for eligible activities designed to meet the needs of colonia residents, such as water and wastewater improvements, housing rehabilitation for low and moderate income households, the payment of assessments levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement, and other improvements including street paving and drainage;

(B) Colonia Fund Planning (CFP) program provides assistance for planning activities that prepare colonia areas for needed water, sewer and housing improvements. Assistance is provided to gather information regarding demographics, housing, land use statistics, public facilities and public services;

(C) Colonia Economically Distressed Areas Program (CEDAP) provides assistance to colonia areas to connect to a water and/or sewer system project funded by the Texas Water Development Board Economically Distressed Area Program (TWDB EDAP); and

(D) Colonia Self-Help Center Program, which is administered by the Texas Department of Housing and Community Affairs (TDHCA), provides assistance to low-income and very low-income individuals and families living in colonias to finance, refinance, construct, improve or maintain safe and suitable housing.

(4) Planning/Capacity Building (PCB) Fund provides assistance to conduct planning activities that assess local needs, develop strategies to address local needs, build or improve local capacity to undertake future community development projects, or that include other needed planning elements (including telecommunications and broadband needs).

(5) Disaster Relief/Urgent Needs Fund is available for assistance and recovery following a disaster situation or for qualifying urgent infrastructure needs. This fund is divided into two programs:

(A) Disaster Relief (DR) Fund provides assistance for eligible activities to address emergency situations where an official state or federal disaster declaration has been issued; and

(B) Urgent Need (UN) Fund provides assistance for eligible activities that will restore water or sewer infrastructure whose sudden failure has resulted in death, illness, injury or pose an imminent threat to life or health within the affected jurisdiction.

(6) Small Towns Environment Program (STEP) Fund provides financial assistance to units of general local government that are willing to address water and sewer needs through self-help methods via local volunteers.

(7) Community Enhancement Fund (CEF) is designed to stimulate a community's economic development efforts and improve self-sufficiency, while providing a benefit that potentially enhances the overall quality of life for all residents within a community.

(b) Fund allocations. Of the state's annual CDBG allocation from HUD, the department allocates a certain percentage to each TxCDBG fund category. For specific fund allocations, refer to the department's current TxCDBG Action Plan.

§30.4. National Program Objectives.

All activities funded under the TxCDBG Program must meet one of the following National Program Objectives:

(1) principally benefit (at least 51%) low and moderate income (LMI) persons;

(2) aid in the elimination of slums or blight; or

(3) meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community.

§30.5. Ineligible Activities.

(a) Any activity that does not fall within a category of explicitly authorized activities in the federal CDBG statute (42 USC §5301 et seq.) is ineligible for funding under the TxCDBG Program.

(b) Specific ineligible activities include, but are not limited to:

(1) construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses);

(2) new housing construction;

(3) the financing of political activities;

(4) purchases of construction equipment;

(5) income payments, such as housing allowances;

(6) operation and maintenance expenses (including smoke testing or any other investigative method to determine the overall scope and location of the project work activities);

(7) pre-contract costs, except for those pre-agreement costs authorized by the department in an executed contract;

(8) privately or publicly funded prisons and detention centers; and

(9) racetracks.

§30.6. Administrative Appeal.

(a) Review of application score.

(1) Within 10 business days after the release of application scores for a TxCDBG funding category, a community may contact the department to review and discuss its application score.

(2) A community is not guaranteed to receive a grant award if the department determines that the community's application score requires revision due to a mathematical error in computing the original score. (For additional information regarding receiving an award, see subsection (f) of this section).

(3) A community may appeal the disposition of its application in accordance with this section.

(b) Grounds for appeal.

(1) An appeal may only be filed based on denial or disqualification of an application for TxCDBG funding.

(2) All other decisions regarding contracts and grant administration are final.

(3) The failure of a grant administrator or consultant to properly submit all required documentation to the department is not a basis for appeal.

(c) Filing of request for appeal.

(1) Only the chief (executive or elected) official or authorized representative for the community that submitted the application may request an appeal.

(2) A request for appeal must be in writing and received by the department no more than 15 days after receiving notice of the department's application denial or disqualification. Untimely appeals shall be dismissed.

(d) Contents of request for appeal. A request for appeal filed under this section must be sworn and contain:

(1) the specific reason for the appeal;

(2) a precise statement of relevant facts;

(3) a legal argument in support of the allegations made; and

(4) documentation supporting the request.

(e) Administrative hearing.

(1) Upon the receipt and filing of a timely request for appeal, the department shall set a hearing date and prepare a notice of hearing. The appeal shall be heard by the department's hearing officer.

(2) Within 60 days after the date of the hearing, the hearing officer shall issue a proposal for decision.

(3) The Commissioner, or designee, shall review the hearing officer's proposal for decision and issue a final determination on the request. The final decision shall be issued within 90 days after the date of the hearing, and shall be based on and limited to review of the hearing officer's proposal for decision and documentation presented by the parties in support of their positions.

(4) The community, as appellant, has the burden of proof to show, by a preponderance of the evidence, that the department's denial or disqualification of appellant's application was not supported by the laws and regulations governing the TxCDBG program, including, without limitation, the state's approved action plan.

(5) Information not available or not submitted to the department at the time the department's decision was made will not be considered by the hearing officer or by the Commissioner or the Commissioner's designee.

(6) The Commissioner's determination of the appeal shall be the final administrative action of the department and is subject to judicial review under Chapter 2001, Texas Government Code.

(f) Decision on appeal.

(1) An appellant is not guaranteed to receive funding if the Commissioner determines that an appellant's application or score requires revision. The appellant's score will be compared to other applications scored during that application cycle. If the revised score does not put the appellant in funding range when ranked against other applications from the same scoring round, no award will be made.

(2) A finding in favor of the appellant may affect the funding of other communities within the scoring round that received a Notice of Award.

§30.7. Conflict of Interest.

(a) Applicable law.

(1) The conflict of interest and procurement regulations prescribed by HUD in 24 CFR Parts 58 and 570 apply to all contracts, subcontracts, or subawards entered into as a result of, or in furtherance of, a TxCDBG award or contract.

(2) In addition to the federal conflict of interest and procurement regulations, state and local procurement and conflict of interest laws apply.

(b) Match requirements. A community's cash match may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the community to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

(c) Administration and engineering services. Administration and engineering services may not be provided to a community by the same firm or consultant.

(d) Conflicting laws. In the event of a conflict between federal, state and local law, the more stringent provision shall control.

§30.8. Document Retention.

(a) Applications not selected for funding. A community whose application is not selected for funding shall retain copies of all documents submitted to the department in connection with its application for a period of three years after the application deadline date.

(b) Applications selected for funding. A contractor shall retain copies of all documents submitted to the department in connection with its application as well as copies of all financial and programmatic records, supporting documents, statistical records, and all other records relating to the TxCDBG contract required to be maintained by 24 CFR §570.490 and §570.506 for the greater of:

(1) a period of three years after the close-out of the grant from HUD to the State of Texas (i.e., after all contracts for the program year have been closed out); or

(2) other record retention obligations specific to the contractor's TxCDBG contract or project. A contractor may be required to meet record retention requirements greater than those specified in this subsection until any and all outstanding monitoring or audit issues are resolved to the department's satisfaction and the requirements of other applicable law or regulations are met.

(c) Community responsibility. It is the responsibility of the community to ensure compliance with document retention requirements. A community should not rely on its procured grant administrator or consultant, if applicable, to ensure compliance with the document retention requirements of this section.

(d) Program year close out. Current program year closeout information is posted by the department on its website.

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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DIVISION 2. APPLICATION INFORMATION

4 TAC §§30.20 - 30.31

New Subchapter A, Division 2, Application Information, §§30.20 - 30.31 are proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.20. Eligible Applicants.

(a) Communities that are located in the non-entitlement areas of the state and that are not participating or designated as eligible to participate in the entitlement portion of the federal CDBG Program are eligible to apply for funding under the TxCDBG Program. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible to apply for the Colonia Fund only.

(b) Non-entitlement cities are cities located predominately in rural areas and are generally:

(1) cities that have a population of less than 50,000;

(2) cities that are not designated as a central city of a metropolitan statistical area; or

(3) cities that are not participating in urban county CDBG programs.

(c) Non-entitlement counties are counties that are predominately rural in nature and generally have fewer than 200,000 persons in the non-entitlement cities and unincorporated areas located in the county.

§30.21. Type and Number of Applications.

(a) The following two types of applications are permitted under the TxCDBG Program:

(1) Single-jurisdiction applications. A community may submit only one application on its own behalf per TxCDBG fund if the project beneficiaries are limited to persons located within the community's jurisdiction.

(A) An eligible community may not submit an application for a project that would primarily benefit another community that does not meet TxCDBG application threshold requirements.

(B) Under certain situations, which are described in a fund category's application guide, an eligible city may submit a single-jurisdiction application that benefits persons residing inside its extraterritorial jurisdiction, and a county may submit a single-jurisdiction application on behalf of an incorporated city.

(2) Multi-jurisdiction applications. Two or more eligible communities may submit a joint application if the proposed activities or project beneficiaries are located within more than one jurisdiction.

(A) The proposed activities must:

(i) be located within each participating community's jurisdiction; or

(ii) mutually benefit residents of each community included in the application.

(B) One of the participating communities must be designated to act in a representative capacity for all of the participating communities. The designated community assumes overall responsibility for ensuring that the application activities, if funded, will be carried out in accordance with statutory and contractual requirements. The designated community must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements.

(C) All communities participating in a multi-jurisdiction application must meet citizen participation and application threshold requirements.

(D) A community participating in a multi-jurisdiction application may not submit a single jurisdiction application for the same funding category.

(b) A community may not submit an application under more than one TxCDBG funding category if the proposed activities or beneficiaries under each application are the same or substantially similar.

§30.22. Application Costs.

Costs for preparing and submitting an application to the department are not reimbursable with TxCDBG funds.

§30.23. Citizen Participation Process.

(a) Citizen Participation Plan. A community that intends to apply for TxCDBG funds must develop and follow a detailed citizen participation plan that sets forth the community's policies and procedures for citizen participation and must make the plan public. The plan must be completed and available before an application for TxCDBG funding is submitted to the department. The community must meet the following requirements:

(1) provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which TxCDBG funds are proposed to be used;

(2) ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the community's proposed and actual use of TxCDBG funds;

(3) furnish citizens information, including but not limited to:

(A) the amount of TxCDBG funds expected to be made available for the current program year;

(B) the range of activities that may be undertaken with the TxCDBG funds;

(C) the estimated amount of the TxCDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(D) the proposed activities likely to result in displacement and the community's anti-displacement and relocation plans required under 24 CFR §570.488.

(4) provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals for the use of TxCDBG funds;

(5) provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities, and a review of program performance:

(A) Initial public hearing requirement. A public hearing to cover community development and housing needs must be held before submission of an application to the department.

(B) Final public hearing requirement. A public hearing must be held after completion of a funded project to afford citizens an opportunity to review and comment on the community's performance, including the actual use of TxCDBG funds provided under the contract. The final public hearing must be held prior to submitting a closeout report to the department.

(6) provide reasonable notice of hearings and hold hearings at times and locations convenient to potential or actual beneficiaries, with reasonable accommodations including material in accessible formats for persons with disabilities. (Additional hearing requirements are provided in §30.24 of this subchapter (relating to Additional Public Hearing Requirements);

(7) provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the community's application to the department. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the department;

(8) provide written procedures that citizens must follow when submitting complaints and grievances, which include the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances within 15 working days where practicable.

(b) Public notice of proposed application.

(1) A community must provide reasonable notice of the availability of a proposed application in order to afford affected citizens an opportunity to examine the application's contents to determine the degree to which they may be affected, and to submit comments on the proposed application.

(2) This requirement may be met by publishing a summary of the proposed application in one or more local newspapers of general circulation at least five (5) days prior to submitting the application to the department, and by making copies of the proposed application available at libraries, government offices, and public places. The published notice or summary must describe the contents and purpose of the proposed application, including:

(A) the TxCDBG fund category for which the application will be submitted;

(B) the amount of funds requested;

(C) a description of proposed activities;

(D) the location(s) of the proposed activities; and

(E) the locations and hours where copies of the entire proposed application may be examined.

(c) Preparation of final application. In the preparation of the final application, the community shall consider comments and views received related to the proposed application and may, if appropriate, modify the final application prior to submission of the application to the department. The final application shall be made available to the public.

(d) Records retention. The community shall retain all documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years after the application deadline date or until the project, if funded, is closed out. Such records must be made available to the public in accordance with the Texas Public Information Act, Chapter 552 of the Texas Government Code.

§30.24. Additional Public Hearing Requirements.

(a) Communities must conduct public hearings in accordance with the requirements of the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, including notice requirements.

(b) Public hearings must be:

(1) held at times and locations convenient to potential or actual beneficiaries (after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday); and

(2) conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate.

(c) Each public notice of hearing must:

(1) be published in a local newspaper of general circulation at least 72 hours prior to the scheduled meeting;

(2) include the date, time, and location of the hearing and the topics to be considered at the hearing;

(3) be printed in English or the language predominantly spoken by non-English speaking residents in the proposed beneficiary area;

(4) be posted and prominently displayed in public buildings; and

(5) be distributed to local organizations that provide services or housing for low and moderate income persons, including but not limited to faith-based organizations, the local or area Public Housing Authority, the local or area health and human services office, and the local or area mental health and mental retardation office.

(d) Failure to comply with public notice requirements will result in disqualification of an application.

§30.25. Application Threshold Requirements.

To be eligible to apply for or to receive funding under the TxCDBG Program, a community must meet the following criteria.

(1) Grant administration. Demonstrate the ability to manage and administer the proposed project.

(2) Financial capacity. Demonstrate the financial management capacity to sustain operation and maintenance of any improvements made in conjunction with the proposed project.

(3) Proposed benefits. Community must demonstrate the ability to meet all proposed benefits identified in its application, including job creation if applicable.

(4) Levy and collect tax. Community must levy and collect a local property tax or local sales tax option.

(5) Past performance. Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The department will consider a community's performance on previous TxCDBG

contracts during a timeframe determined by the department. Factors to be considered include, but are not limited to, the following:

(A) whether all outstanding compliance and audit findings have been resolved and the length of time to resolve them.

(B) whether all reporting and other contract requirements were met within prescribed deadlines;

(C) whether proposed benefits were met; and

(D) whether the community has a history of actively working with the department to resolve any outstanding audit, monitoring, and/or reporting issues identified by the department. The community must make a showing of substantial progress demonstrating expedient resolution of the issues.

(6) Pending TxCDBG contracts. A community with a pending TxCDBG contract must meet other threshold requirements specified by the department in a fund category's application guidelines and/or the current TxCDBG Action Plan, including 12-month, 24-month, and 36-month threshold requirements, as applicable.

(7) Delinquent audits. A community must submit any past due audits to the department within the timeframes prescribed by the department. (For audit requirements, see §30.26 of this subchapter.)

(8) Other application requirements. Other threshold requirements relevant to a particular fund category may be included in the applicable application guidelines.

§30.26. Audit Requirements.

(a) Single audits. Communities are required to comply with all single audit requirements, including timely submission of Audit Certification Forms (ACF), regardless of whether the required compliance is based on received funds other than TxCDBG awards.

(b) Single delinquent audit. A community with one delinquent single audit may be eligible to submit an application for funding. If the community meets threshold requirements for funding, and has only one single audit delinquency, the department will withhold the issuance of a grant award or contract until it receives a satisfactory audit from the community. If the department does not receive the community's delinquent audit within 90 days after the application deadline, the application will be considered withdrawn by the community. The colonia self-help center program is exempt from the threshold requirement described in this subsection.

(c) Multiple delinquent audits. A community with more than one delinquent audit is ineligible to apply for and receive TxCDBG funding. Communities applying for Colonia Self-Help Center funds that have multiple delinquent audits will be reported to TDHCA for review and recommendation.

(d) Delinquency of five years or more. A community that has been delinquent in meeting single audit requirements by failing to submit a required single audit for five years or more is ineligible to receive any TxCDBG funds for a period of five years. After the five-year ineligibility period, the community may re-establish eligibility by following the program eligibility process described in Policy Issuance 12-01 or the TxCDBG Project Implementation Manual.

(e) Pending TxCDBG contracts. Failure of a contractor to meet single audit requirements will result in a hold on all existing contract amendments and draw requests until the department has determined that all audit requirements are satisfied.

§30.27. Beneficiary Identification Methods.

(a) Communities are required to document and report the beneficiaries of each proposed application activity regardless of the national program objective met by the activity.

(b) Acceptable methods of identifying and documenting beneficiaries are provided in each TxCDBG fund category's application guidelines and the TxCDBG Project Implementation Manual.

(c) If a proposed application activity addresses the national program objective of principally benefitting LMI persons, the applicant community must submit as part of its application the method used to document the total beneficiaries and the number of LMI persons, and documentation or data to verify the income status of those persons.

(1) A community that chooses to use locally generated data instead of standardized information available to all communities must use the survey instrument provided by the department and must follow the procedures for the survey instrument prescribed in the most recent Survey Methodology Manual.

(2) Surveys must be performed in accordance with specific requirements established in the most recent application guide for the fund category.

(3) Communities may not use surveys or survey questionnaires completed more than five years prior to the current program year to document the beneficiaries of each activity proposed in an application.

§30.28. Public Information in Applications.

(a) All information submitted to the department under this subchapter is subject to the Texas Public Information Act (PIA), Chapter 552, Texas Government Code. Information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

(b) If it is necessary for a community to submit proprietary or otherwise confidential information to the department, the community must clearly label that proprietary or confidential information and identify the specific exception to disclosure under the PIA.

§30.29. Application Review.

(a) Upon receipt of an application, the department performs a preliminary review to determine application completeness and eligibility, i.e., whether the application is complete, whether the community meets all threshold requirements, and whether all proposed activities are eligible for funding. Incomplete applications may not be supplemented after the application deadline. For applications that require clarification, the department will notify the community and provide an opportunity to submit additional information. The community must submit the requested information within 10 business days after the date of notification. Applications not corrected within the deadline will be considered withdrawn by the community and will not receive further consideration by the department.

(b) The department will not consider or fund an application for proposed project activities that are being funded under an existing TxCDBG contract or that are being considered for funding under a pending application.

(c) With the exceptions of the TCF, Colonia Fund, and DR/UN Fund, as qualified and determined by the rules for those fund categories, a community is eligible to receive only one award per fund per program year.

(d) The department may determine that a community is ineligible for TxCDBG funding, regardless of whether the community, at the time of application submission, met threshold and past performance requirements, based on the community's pattern or history of unsatisfactory:

(1) performance on previously awarded TxCDBG Program contracts;

(2) management and administration of TxCDBG contracts; or

(3) financial management capacity based on a review of the community's official financial records and audits.

§30.30. False Information in Applications.

(a) If a community knowingly makes false statements or provides false or incorrect information in an application which has the effect of increasing the community's competitive advantage, the number of potential beneficiaries, or the percentage of low to moderate income beneficiaries, the department may take one or more of, but are not limited to, the following actions:

(1) disqualify the application and hold the community ineligible for TxCDBG funding for a period of at least one year but not to exceed two program years;

(2) hold the community ineligible for TxCDBG funding for a period of two program years or until any issue of restitution is resolved, whichever is longer; and/or

(3) withdraw the award and/or terminate the contract. In such event, the community shall return or repay to the department any TxCDBG funds received under the contract.

(b) A community whose application is denied or disqualified may appeal the department's decision by filing a written appeal in accordance with §30.6 of this subchapter (relating to Administrative Appeal).

§30.31. Withdrawal after Notice of Award.

(a) If a community fails to execute a contract within 30 calendar days from the date the contract was sent to the community, the department may withdraw the award. The department shall not be liable for costs incurred by the community in the event it fails to timely execute a contract.

(b) If a community fails to resolve any compliance and audit findings, or other issues related to any contract previously awarded by the department, within 90 calendar days from the date of the department's request or notice, the department will withdraw the award.

(c) This section does not apply to Colonia Self-Help Center contracts or awards.

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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DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §§30.50 - 30.64

New Subchapter A, Division 3, Administration of Program Funds, §§30.50 - 30.64 are proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.50. Community Development (CD) Fund.

(a) General provisions.

(1) In addition to meeting the application threshold requirements in §30.25 of this subchapter (relating to Application Threshold Requirements), in order to be eligible to apply for community development funds, a community must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(2) A community must demonstrate it is adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the current application guidance. Applications proposing projects other than water and sewer must include a description of how the community's water and sewer needs will be met and the source of funding to be used to meet those needs.

(b) Application cycle. Applications are accepted on a biennial basis and selected for award pursuant to regional competitions held during the first year of the biennial cycle. An eligible community may submit one application per cycle as prescribed in the most recent application guide for this fund.

(c) Regional allocations.

(1) Regional review committees (RRC). There is a RRC in each of the 24 state planning regions. Each RRC is comprised of at least 12 members appointed by the Commissioner, who serve until replaced at the discretion of the Commissioner.

(2) Program year allocations. Each state planning region is provided with a regional CD Fund allocation for each program year of the biennial cycle once HUD releases the state's annual CDBG allocation.

(3) RRC priority set-aside. Each RRC is highly encouraged to allocate a percentage or amount of its CD Fund allocation to housing projects and, for RRCs in eligible areas, non-border colonia projects proposed in and for that region. Under a set-aside, the highest ranked applications for a housing or non-border colonia activity, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing or non-border colonia set-aside level. If the region allocates a percentage of its funds to housing and/or non-border colonia activities and applications conforming to the maximum and minimum amounts are not received to use the entire set-asides, the remaining funds may be used for other eligible activities. (Under a priority set-aside process, a community would not be able to receive an award for both a housing or non-border colonia activity and an award for another CD Fund activity during the biennial cycle.)

(d) Selection procedures.

(1) Initial review. Upon receipt of an application, the department performs an initial review for application completeness and eligibility in accordance with §30.29 of this subchapter (relating to Application Review). Only the department may disqualify an application from consideration.

(2) Shared scoring system.

(A) During the first program year of the application cycle, eligible applications are scored and ranked at the state level by the

department and at the regional level by the RRC of the region. (Department and RRC scoring criteria are provided in subsection (e) of this section.)

(B) A RRC must submit its regional application scores to the department within 30 days after the application deadline or a date specified by the department, using point intervals (decimal points) to reduce the chance of ties. RRC scores may not be dependent upon an individual RRC member's judgment or discretion. RRCs may not change the requested amount of TxCDBG funding, change the scope of the proposed project, or negotiate the specifics of any application.

(3) Determination of final rankings. Regional scores and RRC ranking of applications are not considered final until they have been reviewed and approved by the department. The department will review all scores for accuracy and determine the final ranking of applications once RRC and department scores are summed. Each RRC is responsible for providing final scores to communities and the public.

(4) Awards. After the department determines the final rankings of applications, awards are made based on each region's allocation and awarded until funds are depleted. If the program year allocation is insufficient to completely fund the next highest ranked application in the region, projects may be funded using TxCDBG deobligated funds or other funds, to the extent available.

(e) Scoring criteria.

(1) Department scoring criteria. The following factors are considered by the department when scoring CD Fund applications (detailed application and scoring information are available in the application guidelines):

(A) past awards--whether a community has received TxCDBG fund awards in the past two application cycles before the application deadline;

(B) past performance--the department will consider a community's performance on previously awarded TxCDBG contracts within the past 4 years preceding the application deadline. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the TxCDBG contract.) Evaluation of a community's past performance will include the following:

(i) completion of contract activities within the original contract period;

(ii) submission of all contract reporting requirements within prescribed deadlines;

(iii) submission of the required close-out documents within the period prescribed for such submission;

(iv) timely response to monitoring findings on previous TxCDBG contracts, especially any instances when the monitoring findings included disallowed costs;

(v) timely response to audit findings on previous TxCDBG contracts; and

(vi) expenditure timeframes on the applicable TxCDBG contracts.

(C) proposed project--whether all activities proposed in the application involve basic infrastructure (water, sewage, roads, and flood drainage) or housing activities.

(D) national objective--whether each proposed project activity will benefit at least 51% LMI persons.

(2) RRC scoring criteria. Each RRC is responsible for determining local project priorities and objective scoring factors for its region in accordance with the requirements of this section and the current TxCDBG Action Plan. Each RRC must establish the numerical value of the points assigned to each scoring factor and determine the total combined points for all RRC scoring factors.

(A) Procedures for selecting scoring criteria. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. RRCs are responsible for convening public hearings to discuss and select the objective scoring criteria that will be used to score and rank applications at the regional level.

(i) Notice of public hearing. RRC proceedings are subject to the Texas Open Meetings Act. Each RRC must comply with state law and the public hearing requirements provided in §30.24 of this subchapter (relating to Additional Public Hearing Requirements), as well as the following requirements.

(I) Each RRC must provide the meeting notice to each eligible community in its region at least five business days prior to the public hearing. The RRC must maintain written confirmation that notice was provided to each community.

(II) Notice of hearing must be published in a newspaper of general circulation in the region at least three days prior to the meeting. A published newspaper article is acceptable in lieu of a public notice if it meets the content and timing requirements.

(ii) Attendance at meetings. A quorum is required for all public meetings.

(iii) Final selection of scoring criteria. The final selection of the scoring criteria is the responsibility of the RRC and must be consistent with the requirements of the current TxCDBG Action Plan. RRCs are encouraged to establish a priority scoring factor that considers the nature and type of project. A RRC may not adopt scoring factors that directly negate or offset the department's scoring factors. Each RRC must obtain written approval from the department before implementing its RRC scoring methodology. The department will review the scoring factors selected to ensure that all scoring factors are objective.

(B) Regions without RRC scoring methodology. In the event a RRC for a region fails to approve an objective scoring methodology to the satisfaction of the department consistent with the requirements in the current TxCDBG Action Plan by the established deadline, or fails to adopt or implement the approved methodology, the department will establish scoring factors for that region by using the most recently approved final RRC scoring criteria and modifying scoring factors as applicable in accordance with the current TxCDBG Action Plan.

(f) RRC Guidebook.

(1) Each RRC shall develop a RRC Guidebook to notify eligible communities of the objective scoring criteria and other RRC procedures for its region. RRCs must clearly indicate how responses would be scored under each factor and use data sources that are verifiable to the public.

(2) The RRC shall select one of the following entities to develop the RRC Guidebook, calculate the RRC scores, and provide other administrative RRC support:

(A) regional council of governments (COG);

(B) department staff or department designee; or

(C) a combination of COG and department staff or department designee.

(3) The RRC Guidebook must include information on the selection of the entity responsible for calculating the RRC scores and the role of each entity selected. The RRC also must include information relating to any housing and/or non-border colonia set-asides in its RRC Guidebook.

(4) The RRC Guidebook must be approved by the department and adopted by the RRC at least 90 days prior to the CD Fund application deadline.

(5) The department will review each RRC Guidebook to ensure that the scoring procedures are in compliance with 24 CFR §91.320(k)(1)(i), which states in relevant part, "The statement of method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it, understand what criteria and information their application will be judged, and be able to prepare responsive applications." As part of the approval process of the RRC Guidebook, the department may edit the scoring factors for consistency with the current TxCDBG Action Plan, or provide further details or elaboration on the objective scoring methodology, data sources, and other clarifying details without the necessity of a subsequent RRC meeting.

(g) Other department responsibilities. The department may:

(1) establish the maximum number of regional scoring factors that may be used in order to improve review and verification efficiency, or exclude certain regional scoring factors if the data is not readily available or verifiable in a timely manner. To ensure consistency, the department may determine the acceptable data source for a particular regional scoring factor;

(2) establish a deadline for a RRC to adopt objective factors for all of its scoring components and submit its guidebook incorporating the objective scoring methodology to the department for approval;

(3) establish a RRC scoring review appeals process; and

(4) make a site visit to recommended application localities.

§30.51. Texas Capital Fund (TCF)--General Provisions.

(a) A proposed project which is located in more than one jurisdiction, or in which beneficiaries from more than one jurisdiction will be counted, must be submitted as a multi-jurisdiction application. The department has sole discretion to determine what constitutes a project.

(b) The department will not accept applications from more than one community proposing project activities if the benefitting business and location are the same. An award will not be made to both a county and a city located within the county for the same project.

(c) Awards will be made to fund actual, allowable and reasonable costs of a proposed project and may not exceed these amounts. Awards will not exceed the amount originally requested in the application.

(d) The following activities and/or use of funds are specifically ineligible:

(1) speculation, investment or excess improvements over the minimum improvements necessary to support the business;

(2) refinancing or to repay the applicant community,

(3) a local related economic development entity,

(4) expenditures of the benefiting business or its owners and related parties;

(5) infrastructure improvements that include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment;

(6) real estate improvements designed and/or built for a single, special or limited use or purpose are ineligible for funding; and

(7) machinery and equipment used in the production and/or operations of a benefitting business.

§30.52. Texas Capital Fund--Real Estate and Infrastructure Development Programs.

(a) Application cycle. Applications for Real Estate and Infrastructure funding are accepted on a monthly basis. Applications not selected for award may be resubmitted for consideration in subsequent rounds.

(b) Award limits. A community may not receive more than two Infrastructure awards per program year.

(c) Application requirements.

(1) Applications must demonstrate that proposed activities will meet the national objective of principally benefitting LMI persons through permanent job creation and/or retention which are held or will be held by LMI persons.

(2) A community may submit an application for funding to support or benefit a maximum of three businesses.

(3) An eligible county may submit an application to support a business within an incorporated city, or an eligible city may submit an application to support a business outside its corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties not to exceed five miles beyond the city's extraterritorial jurisdiction in which the city is located, if the community demonstrates that the project is appropriate to meet its needs, the community has the legal authority to engage in such a project, and at least 51% of the principal beneficiaries reside within the community's jurisdiction.

(4) The department will not consider or fund an application in which the benefitting business:

(A) is an educational institution, including but not limited to colleges and universities;

(B) is a governmental entity; or

(C) has principals who within the ten-year period immediately preceding the application have filed for relief or obtained a discharge under Chapters 7, 11 or 13 of the United States Bankruptcy Code. Upon request, the department will evaluate extenuating circumstances on a case-by-case basis.

(5) The department will not consider an application if the business responsible for meeting job creation requirements is currently benefitting from a TCF Real Estate or Infrastructure Development contract.

(6) The department will not consider applications for a TCF project where the community and one or more other communities are competing to provide funds for that project.

(7) A community may apply under the TCF fund category for an award to assist or facilitate the relocation of a business when certain requirements, as defined in the TCF application guidelines, are met.

(d) Selection procedures.

(1) Preliminary review and scoring of applications. The department will review and score applications based on selection criteria which focus on the following factors (detailed application and scoring information are available in the TCF application guidelines):

(A) Job creation criteria:

(i) cost-per-job;

(ii) job impact;

(iii) wage impact; and

(iv) primary jobs created/retained;

(B) Unemployment rate; and

(C) Return on investment.

(2) In-depth review of applications in funding range. Once applications are evaluated and determined to be in the funding range, the proposed projects will be evaluated on the following factors:

(A) the community's history of administering previous TxCDBG awards;

(B) strength of the business or marketing plan;

(C) evaluation of the business' and the business' principal owners credit;

(D) evaluation of community and business need; and

(E) justification of minimum necessary improvements to serve the project.

(3) Site visit. The department may schedule a visit to the community's jurisdiction to discuss the project and program rules with the chief elected official (or designee) and business representative(s), and to visit the project site.

(4) Tie score. In the event of a tie score, tying applications are ranked from highest to lowest based on the greatest proposed job impact.

(e) Job creation/retention requirements. For an activity that creates and/or retains jobs, Family Income/Size Certification forms must be submitted for employees to demonstrate that at least 51% of the jobs are or will be held by low and moderate income persons.

(f) Match requirements. The following match requirements apply to the Real Estate and Infrastructure Development programs.

(1) Community match. The leverage ratio between all funding sources to the TCF fund request may not be less than:

(A) 1:1 for awards of $750,000 or less;

(B) 4:1 for awards of $750,100 to $1,000,000; and

(C) 5.1 for awards of $1,000,000 to $1,500,000.

(2) Contribution by each benefitting business. Each benefitting business is required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. Equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. For businesses that have been operating for less than three years and are utilizing the Real Estate program, a minimum of 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required.

(g) Repayment requirements. Awards for real estate improvements or acquisition, private infrastructure, and rail improvements require repayment to the department. No interest accrues on the repayment obligation. Payments must begin the first day of the third month following the construction completion date or acquisition date. Generally, repayment must be made to the department within 240 months. For awards that have a repayment amount of less than $300,000, repayment must be made to the department within 120 months.

§30.53. Texas Capital Fund--Downtown Revitalization Program (DRP).

(a) Application cycle. Applications for the DRP are accepted annually, during a period specified by the department.

(b) Pending DRP contracts. Existing DRP contracts benefitting a community must be successfully closed out before the community may submit a new application for an award under this fund category. This does not preclude a community from applying for Real Estate or Infrastructure Development Program funding, provided the benefitting business is not in the downtown business district area and the business will meet job creation requirements.

(c) Selection procedures. Applications will be evaluated by the department based on selection criteria which focus on the following factors (detailed application and scoring information is available in the application guidelines):

(1) community needs criteria:

(A) poverty rate;

(B) median income;

(C) unemployment rate; and

(D) community need;

(2) project profile components:

(A) leverage/grant match;

(B) economic development consideration;

(C) sidewalks projects and ADA compliance;

(D) broad-based public support;

(E) emphasis on benefit to low and moderate income persons;

(F) grant application training; and

(3) past performance on previously awarded TxCDBG contracts, if applicable.

(d) Match requirement. The DRP requires matching funds equal to or greater than ten percent of the grant funds requested.

§30.54. Texas Capital Fund--Main Street Improvements Program.

(a) Application cycle. Applications for the Main Street Improvements Program are accepted annually, during a period specified by the department.

(b) Main Street designation. A community must be designated by the Texas Historical Commission as a Main Street municipality at the time of application submission and remain so designated for the duration of the grant contract if awarded.

(c) Pending Main Street contracts. Existing Main Street Improvements Program contracts benefitting a community must be successfully closed out before the community may submit a new application for an award under this fund category. This does not preclude a community from applying for Real Estate or Infrastructure Development Program funding, provided the benefitting business is not in the designated main street area and the business will meet job creation requirements.

(d) Selection procedures. Applications will be evaluated by the department based on selection criteria which focus on the following factors (detailed application and scoring information is available in the application guidelines):

(1) community needs criteria:

(A) poverty rate;

(B) median income;

(C) unemployment rate; and

(D) community need;

(2) project profile components:

(A) leverage/grant match;

(B) economic development consideration;

(C) sidewalks projects and ADA compliance;

(D) broad-based public support;

(E) emphasis on benefit to low and moderate income persons; and

(F) grant application training; and

(3) Main Street program criteria, including National Main Street program recognition, Texas Main Street program participation, and historic preservation ethic.

(e) Match requirement. The Main Street Improvements Program requires matching funds equal to or greater than ten percent of the grant funds requested.

§30.55. Colonia Funds (CF)--General Provisions.

(a) An eligible county may submit an application on behalf of eligible colonias located within 150 miles of the Texas-Mexico border region, except a county that is part of a standard metropolitan statistical area with a population exceeding one million is ineligible under this fund.

(b) A colonia area annexed on or after September 1, 1999, is eligible for Colonia Fund assistance for a period of up to five years after the effective date of the annexation if the area meets the definition of a colonia and other TxCDBG application threshold requirements. An application for the colonia area may be submitted by the county or the municipality in which it is located.

(c) A community may submit one application for Colonia Fund Construction and one application for Colonia Fund Planning (either Area Planning or Comprehensive Planning).

(d) A community may not simultaneously pursue funds under the Colonia Fund and another TxCDBG fund category (e.g., STEP Fund or Disaster Relief/Urgent Need Fund) for substantially the same project. However, communities that are unsuccessful in securing a Colonia Fund award are eligible for consideration under another fund category if they meet that fund category's requirements.

(e) At least 51% of the beneficiaries of proposed activities must be low and moderate income persons.

(f) In accordance with §487.354 of the Texas Government Code, a community that receives TxCDBG money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent (5%) but not more than 15 percent (15%) of the total amount of targeted money to providing financial assistance to colonias within the community to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

§30.56. Colonia Fund: Construction (CFC).

(a) Application cycle. Applications are accepted on a biennial basis through a competitive process.

(b) Selection procedures. Applications will be evaluated by the department based on selection criteria which focus on the following factors (detailed application and scoring information is available in the application guidelines):

(1) community distress factors:

(A) percentage of people living in poverty;

(B) per capita income;

(C) percentage of housing units without complete plumbing; and

(D) unemployment rate;

(2) benefit to LMI persons;

(3) project priorities;

(4) project design;

(5) matching funds; and

(6) past performance on previously awarded TxCDBG grant contracts, if applicable.

§30.57. Colonia Fund: Planning (CFP).

(a) General provisions.

(1) Eligible communities may submit an application for planning activities that fall within one of the following categories:

(A) Colonia Comprehensive Planning--planning activities that will generate a countywide general assessment and/or profile of a county's colonia areas; or

(B) Colonia Area Planning--planning activities that focus on a particular colonia identified from a Colonia Comprehensive Plan that do not duplicate any previously TxCDBG-funded planning activities in the colonia.

(2) Applicants may not use the Area Planning Fund to repeat planning efforts or elements that were completed under the Comprehensive Planning Fund.

(b) Colonia Comprehensive Planning.

(1) Application cycle. Applications are accepted on a biennial basis through a competitive process.

(2) Selection procedures. Applications will be evaluated and scored based on the following selection criteria (detailed information on evaluation and selection is available in the application guidelines):

(A) community distress factors:

(i) percentage of people living in poverty;

(ii) per capita income;

(iii) percentage of housing units without complete plumbing; and

(iv) unemployment rate;

(B) project design:

(i) the severity of need for the comprehensive colonia planning effort;

(ii) how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, and housing conditions, and the development of short-term and long term strategies to resolve the identified needs; and

(iii) the extent to which any previous planning efforts for colonia area(s) have been accomplished; and

(iv) whether the community has provided any local matching funds for the planning or preliminary engineering activities;

(C) the community's past performance on previously awarded TxCDBG contracts; and

(D) award history. A community that has previously received a TxCDBG comprehensive planning award would receive lower priority for funding.

(c) Colonia Area Planning.

(1) Application cycle. Applications are accepted on a biennial basis through a competitive process.

(2) Eligibility to apply. In addition to other TxCDBG application requirements, to be eligible to apply for Area Planning a community must already have a completed, TxCDBG-approved Colonia Comprehensive Plan. The targeted colonia(s) identified in an Area Planning application must be an area that was included in the Comprehensive Plan.

(3) Selection procedures. Applications will be evaluated and scored based on the following selection criteria (detailed information on evaluation and selection is available in the application guidelines):

(A) community distress factors:

(i) percentage of people living in poverty;

(ii) per capita income;

(iii) percentage of housing units without complete plumbing; and

(iv) unemployment rate;

(B) project design:

(i) the severity of need within the targeted colonia area(s);

(ii) how clearly the proposed planning effort will remove barriers to the provision of public facilities to the targeted colonia area(s) and result in the development of an implementable strategy to resolve the identified needs;

(iii) the planning activities proposed in the application;

(iv) whether each proposed planning activity will be conducted on a colonia-wide basis;

(v) the extent to which any previous planning efforts for the targeted colonia area(s) have been accomplished;

(vi) the TxCDBG cost per low/moderate-income beneficiary; and

(vii) the availability of funds to the community for project financing from other sources.

(C) the community's past performance on previously awarded TxCDBG contracts, if applicable;

(D) benefit to LMI persons; and

(E) matching funds.

§30.58. Colonia Economically Distressed Areas Program Set-Aside (CEDAP).

(a) Eligibility.

(1) CEDAP is limited to counties and non-entitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund) located in those counties that are eligible under the Colonia Fund and TWDB EDAP.

(2) A community with a pending CEDAP contract that has been open in excess of the original contract period (generally 48 months) is ineligible for a new CEDAP award.

(3) A county that is designated as eligible for the TWDB EDAP must have adopted and be enforcing the Model Subdivision Rules (MSR) established pursuant to Section 16.343 of the Texas Water Code. If applicable, the community must demonstrate compliance with the MSR requirements set in the Texas Water Code.

(b) Application cycle.

(1) Applications may be submitted to the department as-needed with priority given to applications on a "first-come, first serve" basis.

(2) An application may not be submitted until after construction begins on the water or sewer system financed through the TWDB EDAP.

(3) Only one CEDAP award may be made to an eligible community within a TxCDBG program year, and the community may have no more than one existing pending CEDAP contract.

(c) Selection procedures. Applications will be evaluated by the department based on the following factors (detailed application and evaluation information are available in the application guidelines):

(1) the proposed use of the TxCDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the TWDB EDAP program;

(2) the ability of the community to utilize the grant funds in a timely manner;

(3) the availability of funds to the community for project financing from other sources;

(4) the community's past performance on previously awarded TxCDBG contracts, if applicable;

(5) cost per beneficiary; and

(6) proximity of project site to entitlement cities or metropolitan statistical areas.

(d) Eligible activities. Eligible CEDAP activities are limited to those that provide assistance to low and moderate income persons residing in colonias who cannot afford the costs of residential service lines, hookups, and minor plumbing improvements associated with connection to a water supply or sewer system, any part of which is financed through the TWDB EDAP.

§30.59. Colonia Self-Help Centers Fund.

(a) The Colonia Self-Help Centers Program is administered by the Texas Department of Housing and Community Affairs (TDHCA). TxCDBG funds are allocated to this program on an annual basis to provide assistance to counties identified in §2306.582, Texas Government Code, and/or counties designated as economically distressed areas under Chapter 17, Texas Water Code.

(b) TDHCA has established self-help centers in the following counties: Cameron, El Paso, Hidalgo, Maverick, Starr, Val Verde, and Webb.

(c) If deemed necessary and appropriate, TDHCA may establish self-help centers in other counties as long as the site is located in a county that is designated as an economically distressed area under the

TWDB EDAP, and the colonias that will be served by the center are located within 150 miles of the Texas-Mexico border.

§30.60. Disaster Relief (DR) Fund.

(a) Application cycle. Applications are accepted on an as-needed basis throughout a program year to support relief efforts and activities related to addressing a natural disaster in which a federal or state disaster declaration has been issued. To be eligible to apply, a community must be named in a federal or state disaster declaration.

(b) Selection procedures. To qualify for the DR Fund, a community must meet the following criteria. Detailed selection factors, and other eligibility and project requirements are available in the application guidelines.

(1) The situation addressed by the community must be both unanticipated and beyond the community's control.

(2) The problem being addressed must be of recent origin. This means that the application for assistance must be submitted to the department no later than 12 months from the date of the state or federal disaster declaration listing the community's jurisdiction.

(3) Funds will not be provided under the Federal Emergency Management Agency's (FEMA) Hazard Mitigation Grant Program for buyout projects unless the department receives satisfactory evidence that the property to be purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area.

(4) The community must demonstrate that adequate local funds are not available, i.e., the community has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit required by state statute, or funds from other state or federal sources are not available to completely address the problem.

(5) The department may consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.

(6) A community may not receive funding to construct public facilities that did not exist prior to the occurrence of the disaster. An exception to the construction of new public facilities applies only in response to a governor's drought disaster declaration covering the proposed project area under the following conditions:

(A) the new public water system facilities to be constructed provide a new or improved source of water for the project beneficiaries;

(B) the new public water system facilities are not a redundant or backup water supply;

(C) the new public water system facilities are not temporary in nature. However, they may be initially temporary in nature if constructed to meet a disaster need if they will remain in place and become a permanent facility that is used for meeting demand under non-disaster conditions;

(D) the community has issued a public declaration after determination that within 180 days an adequate water supply will be unavailable, thereby creating a serious and immediate threat to the health or welfare of the community;

(E) the most restrictive response stage has been enacted in the proposed project area subject to a community's Drought Contingency Plan; and

(F) a professional engineer selected by the community certified that the proposed new facilities meet the criteria specified in this rule.

(7) The department may determine that a community with a history of unsatisfactory performance and/or management capacity on previous TxCDBG contracts may still be eligible for funding under the DR Fund; however, the contract administrator for the DR Fund grant must be approved by the department.

(c) Award limits.

(1) A community may not apply for or receive more than one DR Fund grant award to address a single disaster situation. The only exception to this restriction is a county that has received a DR Fund award to address a disaster of drought may apply for another DR Fund award to address a disaster of drought in a different target area.

(2) A community may not apply for or receive an award under the DR Fund and another TxCDBG program to address problems caused by the same disaster.

(d) Funding priorities. The department may prioritize the use of DR funds throughout a program year based on the type of assistance or activity under consideration. Priority for the use of these funds is for repair and restoration activities that meet basic human needs (such as water and sewer facilities, housing, and roads), with the only exception of new facilities to improve water supply under a Disaster Declaration for Drought.

(e) Coordination with other agencies. The distribution of DR funds will be coordinated with other state agencies.

(f) Funded projects. Due to the urgent nature of projects, activities funded under the DR Fund must be completed within one year from the start date of the contract agreement.

§30.61. Urgent Need (UN) Fund.

(a) Application cycle. Applications are accepted throughout a program year on an as-needed basis.

(b) Eligibility Determination. An application for UN Fund assistance will not be accepted until discussions between the potential applicant community and representatives of the department, TWDB, and the TCEQ have taken place. Through these discussions, a determination shall be made whether the situation meets eligibility requirements and if a potential applicant can proceed with an application for the UN Fund.

(c) Eligible activities. UN Fund assistance is available for activities that will restore water and/or sewer infrastructure whose sudden failure has resulted in death, illness, injury, or poses an imminent threat to life or health within the affected community's jurisdiction.

(d) Selection procedures. To qualify for the UN Fund, a community must meet the following criteria. Detailed scoring information and other eligibility and project requirements are available in the application guidelines.

(1) The situation addressed by the community must not be related to a proclaimed state or federal disaster declaration.

(2) The situation addressed by the community must be both unanticipated and beyond the community's control (e.g., not facilities or equipment beyond their normal, useful life span).

(3) The problem being addressed must be of recent origin. This means that the situation first occurred or was first discovered no more than 30 days prior to the date the community submits a written request to the department for UN assistance. UN funds may not be used to address a situation that has been known for more than 30 days

or should have been known would occur based on the community's existing system facilities.

(4) The community must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.

(5) UN funds may not be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.

(6) UN funds may not be used for infrastructure failure that resulted from a lack of maintenance or was caused by operator error.

(7) The infrastructure requested by the community may not include back-up or redundant systems.

(8) The UN Fund will not finance temporary solutions to the problem or circumstance.

(9) The department may consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation, if eligible.

(10) The distribution of these funds will be coordinated with other state agencies.

(e) Match requirement. The following match requirements apply:

(1) If the community's most recent Census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG funds requested.

(2) If the community's most recent Census population is over 1,500 persons, the community must provide matching funds equal to 20 percent of the TxCDBG funds requested.

(3) For county applications where the beneficiaries of water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

(f) Funded projects. Construction on a funded project must begin within 90 days from the start date of the TxCDBG contract. The department may de-obligate contract funds if the contractor fails to meet this requirement.

§30.62. Planning/Capacity Building (PCB) Fund.

(a) Application cycle. Applications are accepted annually through a competitive process. A community may submit only one application per annual application cycle.

(b) Eligibility.

(1) All planning projects with water or sewer elements must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservations plans.

(2) Only eligible communities directly benefitting from funds may apply.

(3) A community with a pending PCB Fund contract is eligible to apply if complete closeout documentation for the pending contract has been submitted to the department.

(4) In addition to the threshold requirements of §30.25 of this subchapter (relating to Application Threshold Requirements), a community must demonstrate that at least 51% of the proposed beneficiaries of the proposed planning activity are of low and moderate income.

(c) Cash match requirement. A cash match is required based on a community's population, except the percentage of match required for county applicants will be based on the actual target area population benefitting from the planning project. Cash match must be pledged by the application deadline. Minimum cash match requirements are provided in the application guide for this fund.

(d) Selection procedures. Applications will be scored and ranked by the department based on selection criteria which focus on the following factors (detailed application and scoring information are available in the application guidelines):

(1) community distress factors:

(A) percentage of persons living in poverty;

(B) per capita income; and

(C) unemployment rate;

(2) benefit to LMI persons;

(3) project design;

(4) program priority;

(5) base match;

(6) area-wide proposals; and

(7) planning strategy and products:

(A) whether and to what extent any previously funded planning efforts have been implemented or accomplished;

(B) how clearly the proposed planning effort will resolve community development needs addressed in the application;

(C) whether the proposed activities will result in the development of a viable and implementable strategy and be an efficient use of grant funds; and

(D) demonstration of local commitment.

§30.63. Small Towns Environment Program (STEP) Fund.

(a) Self-help method. The self-help method is best utilized when conventional water and sewer financing and construction methods do not provide an affordable solution and the community is willing to address its needs through self-help methods. By utilizing a community's own resources (labor, materials, and funding), the costs of installing or improving water or sewer facilities can be reduced significantly from the construction and maintenance costs for water or sewer facilities installed through conventional financing and construction methods.

(b) Application cycle. Applications are accepted two times a year, contingent on the availability of funds. To the extent feasible, funds will be divided equitably between the two application rounds. After all projects are ranked, the department will make awards only for those projects that can be fully funded with money available to the department under this fund category. The department will not fund part or a portion of a project.

(c) Eligibility Determination. The department will not accept an application for STEP Fund assistance until representatives of the potential applicant community and the department have evaluated the self-help process and the department determines that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If the department determines that the community meets all threshold criteria, the community can proceed with the application.

(d) Pending STEP Fund contracts. To be eligible for STEP funding, a community must demonstrate that pending STEP Fund con-

tracts are on schedule in accordance with contract requirements, including approved amendments if applicable.

(e) Ineligibility of certain CD Fund recipients. Communities currently receiving CD Fund grant awards for projects that do not include water, sewer, or housing activities are ineligible for STEP funding.

(f) Eligible activities. STEP funds are only eligible for the following activities:

(1) installation of facilities to provide first-time water or sewer service;

(2) installation of water or sewer system improvements;

(3) ancillary repairs related to the installation of water and sewer systems or improvements;

(4) acquisition of real property necessary for the installation or improvement of water and sewer systems (e.g., easements, rights of way, etc.);

(5) sewer or water taps;

(6) water meters;

(7) water or sewer yard service lines for LMI persons;

(8) water or sewer house service connections for LMI persons;

(9) plumbing improvements associated with providing water or sewer service to a LMI household;

(10) water or sewer connection fees for LMI persons;

(11) rental of equipment necessary for installation of water or sewer systems, if preapproved by the department;

(12) reasonable administrative and engineering costs associated with the improvements; and

(13) other costs that have been preapproved by the department.

(g) Ineligible activities. The following activities are ineligible:

(1) any activity not listed as an eligible activity under this section;

(2) highly complex and specialized installations of water or sewer systems that cannot be completed by volunteers, as determined by the department, in its sole discretion;

(3) water or sewer treatment plants;

(4) temporary solutions, including emergency interconnects not used for ongoing supply or treatment;

(5) backup water supplies not required by TCEQ regulations; and

(6) force account work for STEP construction activities.

(h) Threshold criteria. The following requirements must be met to qualify for STEP funding:

(1) Sparkplugs. The community must have at least three individuals willing to lead and sustain the effort (referred to as "sparkplugs"). Only one local official may serve as a sparkplug. Each sparkplug should have one or both of the following:

(A) ability to properly document all aspects of the project, including eligible costs, volunteer hours, and compliance with federal and state requirements; and

(B) knowledge or skills necessary to lead the self-help effort.

(2) Readiness. The community must demonstrate readiness to proceed with the project, based on a strong local perception of the problem and willingness to take action to resolve it.

(3) Capacity. The community must demonstrate it has the capacity to complete the project, including having available workers with skills required to solve the problem and operate necessary construction equipment.

(4) Savings percentage. The community must demonstrate at least a 40% reduction or savings in construction costs.

(5) Volunteer labor. All work, except administrative and engineering services, must be performed predominately by community volunteers.

(i) Selection procedures. Applications will be evaluated and scored by the department based on the following selection criteria (specific scoring criteria is available in the application guidelines):

(1) project impact;

(2) STEP characteristics, merits of the project, and local effort;

(3) past participation and performance;

(4) percentage of savings off of the retail price; and

(5) benefit to LMI persons. The community must demonstrate that at least 51% of the proposed beneficiaries are LMI persons.

§30.64. Community Enhancement Fund (CEF).

(a) Application cycle. Contingent on the availability of funding, applications for the CEF will be accepted annually, during a period specified by the department. Funding for this program will be provided from deobligated funds and other external sources, when available.

(b) Eligible projects. Community enhancement projects include:

(1) public health-related facilities;

(2) community centers;

(3) workforce development or educational facilities;

(4) safety or emergency facilities (including necessary equipment, to the extent eligible); and

(5) renewable energy projects.

(c) Selection procedures. Applications will be evaluated by the department based on selection criteria which focus on the following factors (detailed application and scoring information is available in the application guidelines):

(1) the community's LMI percentage;

(2) partnerships;

(3) multi-purpose facility or public safety equipment;

(4) sustainability; and

(5) leverage/grant match.

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DIVISION 4. AWARDS AND CONTRACT ADMINISTRATION

4 TAC §§30.80 - 30.84

New Subchapter A, Division 4, Awards and Contract Administration, §§30.80 - 30.84 are proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.80. Department Grant Training Requirement.

(a) An individual third party administrator procured by a community or an employee of a self-administering community that is responsible for administration of a TxCDBG contract must attend CDBG training annually. Administrators may either attend TxCDBG Project Implementation Manual training sessions offered by the department, or other CDBG training such as online certification training approved by the department. This subsection does not apply to Colonia Self-Help Center Set-aside awards.

(b) Failure of a grant administrator to obtain an annual training completion certificate from the department will result in the disallowance of submitted costs for grant administration, and funds claimed by the contractor paid towards grant administration will not be considered for matching requirements. For self-administering contractors, administrative costs for any participating individual that has failed to meet training requirements will be disallowed.

(c) A community is responsible for ensuring that its grant administrator meets training certification requirements.

(d) Specific training requirements and class information can be obtained from the department.

§30.81. Grant Administration by a Third Party.

(a) A community is not relieved of any responsibilities or obligations associated with a grant award if a third party administrator is procured in accordance with state and local requirements. Failure by a grant administrator to submit documentation or communicate requirements to the community is not an excuse for failure to comply with grant terms.

(b) In the event that a community has placed limitations on the actions of a grant administrator, the community must provide the department a list of restrictions in writing as they apply to the administrator's communications or administrative duties on behalf of the community.

(c) Contractors are required to provide to the department a copy of the professional services agreement or contract between any and all third party administrator(s) and the community. The agreement must include, at a minimum:

(1) names of the parties;

(2) effective date and contract term;

(3) scope of services, including any restrictions;

(4) compensation;

(5) contact personnel for all parties;

(6) contract amendment and termination procedures;

(7) procedures for determining the party responsible for failure to meet contract requirements and disallowed costs resulting in contract non-compliance; and

(8) a provision stating that failure to follow federal, state and local procurement procedures will result in the disallowance of administrative costs.

§30.82. Disqualification of an Administrator.

(a) Third-party administrators. In the event a TxCDBG contract results in at least one unresolved finding that results in required repayment by the contractor to the department, the following actions will be taken:

(1) after the first finding related to a third party contract administrator, administrative costs will be disallowed and funds paid for administration will not be considered toward match requirements; and

(2) after the second finding related to the same contractor, administrative costs will be disallowed, funds paid for administration will not be considered toward match requirements, and the third party contract administrator will be ineligible to administer a TxCDBG grant for a period of three years from the date of the finding.

(b) Self-administering communities. In the event there is at least one unresolved finding that results in required repayment by a contractor that self-administers the contract, the following actions will be taken:

(1) after the first finding, administrative costs will be disallowed and funds paid for administration will not be considered toward match requirements; and

(2) after the second finding, administrative costs will be disallowed, funds paid toward administration will not be considered toward match requirements, and in order to be eligible for a future TxCDBG grant award, the contractor will be required to hire a third-party administrator in good standing with the department for subsequent TxCDBG grants for a period of three years from the date of the finding.

§30.83. Changes or Amendments.

(a) Whenever a proposed change requires department approval, requirements for citizen participation must be met. A contractor shall provide citizens with reasonable advance notice of, and opportunity to comment on, activities which are proposed to be added, deleted or substantially changed from the contractor's application to the department. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the department.

(b) The department is not required to approve contract amendment requests and does not guarantee that extensions will be approved.

(1) Requests for amendment made by a contractor that is out of compliance on any TxCDBG grant award may not be approved until the contractor satisfies all requirements for all outstanding contracts.

(2) Requests to change the original project as described in the application, or to add a different or new activity, may not be ap-

proved generally; however, the department may consider approval of a new project under either of the following circumstances:

(A) a natural disaster event, documented by a presidential or gubernatorial declaration; or

(B) a decision by a federal or state agency prevents the contractor from completing the original project.

(c) A request for extension must be received approximately 60 days but no later than 30 days prior to the termination date of the contract.

(d) A request for amendment must be in a manner and format prescribed by the department and include, but not limited to, the following, as applicable:

(1) Proposed amendments to a performance statement or budget: a detailed explanation why the amendment is required and a revised plan of work and/or budget must be submitted.

(2) Contract extension requests: a request for extension must include a timeline of events beginning on the date of contract award, a detailed explanation why the project is not expected to be completed within the contract term, and, if applicable, supporting documentation demonstrating extenuating circumstances.

(e) The department will not approve changes that would have resulted in a lower application score and thus causing the application to be out of funding range.

(f) This section does not apply to amendments for Colonia Self-help Center contracts.

§30.84. Corrective Action.

(a) Failure to comply with federal and state regulations. If a contractor fails to comply with federal or state regulations, the department will require corrective action to address the violations. If the violation is egregious or the result of failure to implement a previous corrective action plan, the department will take enforcement action(s) authorized by the contract, 24 CFR Part 570, and/or the Uniform Grant Management Standards. Current procedures required for compliance with federal and state regulations are found in the TxCDBG Project Implementation Manual. Each contractor is required to comply with program requirements in the following areas, including but not limited to:

(1) environmental review;

(2) acquisition of real property;

(3) competitive procurement (state and federal);

(4) Davis-Bacon and related labor standards; and

(5) Fair Housing and Civil Rights requirements.

(b) Failure to meet contract requirements. If the department finds that a contractor did not provide the level of benefits specified in its contract, the following actions may be taken, including but not limited to:

(1) holding the contractor ineligible to apply for or receive TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(2) requiring the contractor to reimburse the department for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits.

(c) Failure to meet program requirements. If the department finds that a contractor did not comply with any TxCDBG program requirement, as specified in this subchapter, the current TxCDBG Project Implementation Manual or TxCDBG policy issuances, following the period allowed for cure, all TxCDBG funds awarded to the contractor will be suspended including all open contracts and all pending awards, until the non-compliance is resolved.

(d) Corrective action plan.

(1) If a contractor is not meeting contract thresholds, the department may require a corrective action plan from the community that includes:

(A) a timeline of events and actions the contractor has taken to meet project thresholds;

(B) an explanation of circumstances or events that have caused the delays; and

(C) a proposed plan for resolution of project delays or issues and estimated timeline for completion.

(2) If the contractor fails to provide a corrective action plan, or if the department determines that proposed project benefits may not be met without a contract extension, the department may terminate the contract.

(3) If a contract is terminated, the contractor is required to repay all TxCDBG funds received under the contract prior to contract termination.

(e) Withdrawal, suspension or termination. The department may withdraw, suspend or terminate an award or contract under other circumstances when warranted by federal or state law, including applicable federal grant management standards, or UGMS.

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DIVISION 5. REALLOCATION OF PROGRAM FUNDS

4 TAC §§30.100 - 30.103

New Subchapter A, Division 5, Reallocation of Program Funds, §§30.100 - 30.103 are proposed under Texas Government Code §487.051, which provides the department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.100. Reallocation of Funds.

Unallocated deobligated funds, unobligated funds from withdrawn awards, and program income shall be reallocated to other TxCDBG

programs as outlined below and in accordance with the current TxCDBG Action Plan.

§30.101. Deobligated Funds.

(a) On the first day of a program year, any unallocated deobligated funds and other available program income (not derived from TCF real estate projects) will be allocated as follows:

(1) 20% shall be allocated to the Disaster Relief Fund; and

(2) 80% shall be allocated to other fund categories except the Colonia Fund.

(b) The allocation shall be based on the pro-rata share of the percentages allocated to each TxCDBG fund category as specified in the current TxCDBG Action Plan. Allocations to the CD Fund will be distributed to each of the 24 planning regions based upon the methodology used in calculating the annual regional allocation. Allocations to regions that either:

(1) have no eligible applications; or

(2) cannot fully fund the next highest ranking applications, will be made available to other regions with eligible applications or to the DR Fund.

§30.102. Unobligated Funds.

For the use of funds recaptured as a result of the withdrawal of awards, the department follows the following procedures, depending on the fund category in which the award is withdrawn.

(1) CD Fund. Funds from the withdrawal of an award shall be offered to the next highest ranked application from that region that was not recommended to receive an award due to depletion of the region's allocation. A marginal amount may be offered to the next highest ranked application as long as the amount of funds still available exceeds the minimum CD Fund grant amount. Any funds remaining from a regional allocation that are not accepted by a community, that are not offered to a community, or remain due to lack of additional unfunded applications, may be allocated among regions with eligible unfunded applications. If not allocated to another region, the funds are then subject to the procedures used to allocate deobligated funds.

(2) TCF. Funds from the withdrawal of a Main Street or Downtown Revitalization award shall be offered to the next highest ranked application that was not recommended to receive an award due to depletion of the program's allocation. Funds from the withdrawal of a Real Estate and Infrastructure award shall remain in those program allocations to fund other applications. Any unallocated TCF funds are then subject to the procedures used to allocate deobligated funds.

(3) Colonia Funds. Funds from the withdrawal of any Colonia Fund award remain available in the fund's allocation during that program year to meet the 10% legislative set-aside requirement for colonia projects. If unallocated within the Colonia Fund, funds then may be used for other TxCDBG fund categories to fund eligible projects or activities that assist colonia residents. Remaining unallocated funds are then subject to the procedures used to allocate deobligated funds.

(4) DR/UN Funds. Funds from the withdrawal of a DR/UN award shall remain in those program allocations to fund other applications.

(5) PCB Fund. Funds from the withdrawal of a PCB award are offered to the next highest ranked application that was not recommended to receive an award due to depletion of the fund's annual allocation. A marginal amount may be offered to the next highest ranked application as long as the amount of funds still available exceeds the minimum PCB grant amount. Any funds remaining from the allocation that are not accepted by a community from the statewide competition or that are not offered to a community from the statewide competition may be used for other TxCDBG fund categories and, if not allocated to another fund, are then subject to the procedures used to allocate deobligated funds.

(6) STEP Fund. Funds from the withdrawal of a STEP award will be made available in the next round of STEP competition following the withdrawal date in the same program year. If the withdrawn award was made in the last of the two competitions in a program year, the funds would go to the next highest scoring application in the same STEP competition. If there are no unfunded STEP applications, then the funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures used to allocate deobligated funds.

§30.103. Program Income.

(a) Program income is defined as gross income received by a state, a community, or a subrecipient of a community that was generated from the use of CDBG funds. When program income is generated by an activity that is only partially funded with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used. Any remaining program income must be returned to the State.

(b) Program income includes, but is not limited to, the following:

(1) payments of principal and interest on loans made using TxCDBG funds;

(2) gross income from the use or rental of real or personal property acquired by the community or a subrecipient with TxCDBG funds;

(3) gross income from the use, sale, or rental of real property and/or real property improvements owned by the community or subrecipient that was constructed or improved with TxCDBG funds;

(4) gross income from the use of infrastructure improvements constructed or improved with TxCDBG funds;

(5) funds collected through special assessments, impact fees or other additional fees from benefiting businesses, if the special assessments or fees are used to recover all or part of the TxCDBG portion of public improvements;

(6) proceeds from the disposition of equipment purchased with TxCDBG funds; and

(7) interest earned on funds held in an RLF account.

(c) The State may use up to the maximum allowable percentage of the amount recaptured and reportable to HUD each year for administrative expenses under the TxCDBG Program. This amount will be matched by the State on a dollar-for-dollar basis.

(d) Texas Capital Fund and Revolving Loan Fund (RLF) Program Income.

(1) Funds retained in a local RLF established prior to program year 2014 must be used to fund the same type of activity from which such income was derived. At least one eligible loan from the local RLF must be made every three years.

(2) All activities funded with RLF funds must comply with CDBG laws, regulations and guidelines. If a local government does not comply with the CDBG requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the department.

(3) Communities with a local RLF are required to monitor and report to the department program income account balances reflecting amounts received and disbursed and the status of outstanding loans or leases, and comply with other program requirements specified in the current TxCDBG Action Plan, RLF Guide, and TxCDBG Project Implementation Manual.

(4) To the extent there are eligible applications, program income returned to the department will be used to fund awards under the Texas Capital Fund. Other available program income shall be allocated based on the methodology used for deobligated funds.

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 B. STATE OFFICE OF RURAL HEALTH

DIVISION 1. GENERAL PROVISIONS

4 TAC §30.120, §30.121

New Subchapter B, Division 1, General Provisions, §30.120 and §30.121 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.120. Applicable Law.

The department administers programs supporting rural health, only to the extent that funds are appropriated and available, in accordance with Chapter 487 of the Texas Government Code, and manages the state's Medicare rural hospital flexibility program in accordance with 42 USC §1395i-4.

§30.121. Definitions.

In addition to the definitions set forth in Chapter 487, Texas Government Code, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. In the event of a conflict between this subchapter and Chapter 487, the definition in Chapter 487 shall control.

(1) Academic term--A division of the academic year, made up of semesters, trimesters, or quarters, as determined or established by the academic institution.

(2) Allied health--Fields relating to the delivery of health or related services pertaining to the identification, evaluation and prevention of diseases and disorders; dietary and nutrition services; rehabilitation and health systems management.

(3) Capital equipment--Information systems hardware and software, or other equipment as defined by the rules of the Centers for Medicare and Medicaid Services for implementation of the Medicare program.

(4) Capital improvement--The acquisition, construction, or improvement of a facility, equipment, or real property for use in providing health services. The term includes designing, engineering, supervising, inspecting, surveying, and other expenses incidental to the acquisition, construction, or improvements, or the purchase of capital equipment for a health facility.

(5) CFR--Code of Federal Regulations.

(6) Cost of attendance--Allowable costs as determined to be necessary by the financial aid office of an academic institution which includes costs of tuition, fees, books, supplies, room and board, transportation and personal expenses.

(7) Health care professional--Any provider of health care or health related services in the fields of medicine, dentistry, optometry, pharmacy, chiropractic, podiatry, psychology, nursing or allied health.

(8) Health professional shortage area--Any of the following:

(A) a rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the U.S. Secretary of Health and Human Services (Secretary) determines has a health manpower shortage and which is not reasonably accessible to an adequately served area;

(B) a population group which the Secretary determines has such a shortage; or

(C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage.

(9) Satisfactory academic progress--Maintenance of satisfactory cumulative grade point average and course load to qualify the student for placement in planned subsequent years of the degree plan.

(10) Secretary--U.S. Secretary of Health and Human Services.

(11) Service obligation--A defined period of time during which health care services must be provided in a rural health professional shortage area or rural medically underserved area.

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

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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DIVISION 2. OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

4 TAC §§30.140 - 30.148

New Subchapter B, Division 2, Outstanding Rural Scholar Recognition Program, §§30.140 - 30.148 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.140. Purpose.

The Outstanding Rural Scholar Recognition Program (ORSRP) is a competitive forgivable loan program which assists rural communities to sponsor students pursuing studies in health care professions that are needed in the rural community. ORSRP matches state funds with rural community funds to support a student of the community's choice in a health professional education program. In exchange for funds received from the rural community and ORSRP, the health care professional, upon licensure, returns to the sponsoring rural community to practice health care.

§30.141. Selection Committee.

(a) Composition of committee. The selection committee shall be composed of the following 12 members appointed by the commissioner:

(1) one rural practicing family practice physician;

(2) one rural hospital administrator;

(3) one rural practicing registered professional nurse;

(4) one rural practicing allied health professional;

(5) one dean of a medical school;

(6) one dean of a nursing school;

(7) one dean of a school of allied health science;

(8) one head of a vocational/technical institution;

(9) one community college administrator;

(10) one individual knowledgeable in student financial assistance programs;

(11) one rural public school superintendent; and

(12) one rural resident.

(b) Committee officers. The selection committee may elect a chairman, vice-chairman and secretary from among its members.

(c) Duties of committee. In addition to the duties specified in Chapter 487, Subchapter D, Texas Government Code, the selection committee shall:

(1) review cases and make recommendations concerning exceptions regarding the community in which a student may fulfill the obligated service period; and

(2) review cases and make recommendations concerning student academic progress.

(3) The selection committee may adopt rules for the conduct of its activities.

§30.142. Nomination Process.

(a) To be eligible to nominate a student for recognition, a sponsoring organization or entity must:

(1) be a local hospital or hospital auxiliary, rural health clinic, foundation, civic organization, city council, chamber of commerce, commissioners courts, or any combination of such organizations;

(2) be located in a rural community, as defined in §487.101 of the Texas Government Code, in Texas;

(3) agree to provide 50% of the student's cost of attendance, if the nominee is selected to receive a forgivable loan; and

(4) be in good standing with the department.

(b) A sponsoring organization may solicit applications from students interested in health care careers at a local high school or college.

(c) Rural communities shall select students for nomination and sponsorship as outstanding rural scholars based on the following criteria:

(1) the student's academic performance;

(2) the results of one or more sponsor interviews with the student;

(3) a typed essay of no more than 500 words discussing the following:

(A) a description of the health care profession the student is pursuing;

(B) the student's reasons for entering the chosen health care profession; and

(C) the student's reasons for wanting to provide health care to rural Texans;

(4) a minimum of three letters of recommendation from professional staff of the student's high school or college, or from employers or community leaders who have known the student for at least one year; and

(5) the community's needs.

§30.143. Selection of Outstanding Rural Scholars.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements.

(b) To be eligible to participate in the competition, an application must be coordinated and submitted by the sponsor on behalf of the individual being nominated. The application must be on the forms and in a format prescribed by the department.

(c) The department will review each application for completeness and eligibility. Only those applications that meet the eligibility requirements for recognition are then evaluated and ranked by the selection committee.

(d) The selection committee will select outstanding rural scholars based on the following criteria:

(1) the student's academic achievements;

(2) an essay written by the student discussing the student's reasons for entering the competition, the health care degree or program

the student is pursuing, the student's reasons for pursuing the chosen health care profession, and the student's reasons for wanting to provide health care to rural Texans;

(3) sponsor financial commitment;

(4) community statement of need;

(5) standardized test scores; and

(6) the overall quality of the nominee.

(e) The selection committee shall rank the students and inform the department of its selections.

§30.144. Requirements for Forgivable Loan.

(a) Initial loan. To be eligible for a forgivable loan under this program, an individual must:

(1) be recognized as an outstanding rural scholar;

(2) have the sponsor's commitment to provide 50% of the student's costs of attendance;

(3) not have defaulted on nor owe a refund on any state or federal aid; and

(4) be enrolled or intend to enroll in a health care degree or program at an eligible academic institution of higher education.

(b) Subsequent loan. A student who has received an initial loan shall have priority for subsequent loans provided the following requirements are satisfied:

(1) the student maintains satisfactory academic progress in the chosen health care educational program;

(2) the student files a degree plan complete with graduation date;

(3) the student files a course plan, financial aid disclosure statement and grade report each academic term;

(4) the student completes all credit hours and does not reduce the course load or number of credit hours for which the student enrolled at the beginning of each academic term, unless the student submits to the department documentation demonstrating that extenuating circumstances beyond the student's control necessitated a reduction of the credit load; and

(5) funding is available to the department for forgivable loans.

§30.145. Conditions of Forgivable Loan.

(a) The department awards forgivable loans based on the availability of money in the fund.

(b) Forgivable loan funds may be used only for educational expenses at the agreed upon academic institution.

(c) The forgivable loan shall not exceed the annual cost of attendance at the academic institution the student attends. The cost of attendance shall be determined by the academic institution's financial aid office. A student may receive financial aid from other sources; however, the department will reduce the amount of the forgivable loan by the amount of aid from other sources so that the combined financial aid does not exceed the allowable cost of attendance as determined by the financial aid office.

(d) The department may authorize forgivable loans to be awarded to eligible students provided:

(1) the sponsor has executed a Memorandum of Understanding with the department agreeing to provide 50% of the student's costs of attendance for the academic year;

(2) the sponsor and the student have executed a contract with the department which includes the responsibilities of each party and penalties for breach of contract; and

(3) the student has executed a promissory note with a qualified co-signor.

(e) A sponsor must notify the department in writing within two weeks of any information that may affect a student's program eligibility or the student's or sponsor's ability to meet contract requirements.

(f) The student must notify the department in writing within two weeks of any change in enrollment or employment status.

(g) Disbursements of forgivable loan funds shall be made directly to the academic institution according to a schedule determined by the department.

(h) A student who receives a forgivable loan under this program will be forgiven the total forgivable loan by providing full-time health care practice for an obligated period of service equal to 12 months for each year loan support is provided. The obligated period of service shall begin on the date full-time employment or practice begins in the sponsoring rural community after the student has become certified or licensed in the health care profession for which sponsored. If employment is on less than a full-time basis, forgiveness shall be prorated.

§30.146. Breach of Contract.

(a) Breach by sponsor.

(1) A sponsor shall be in breach of contract if the sponsor:

(A) fails to provide 50% of the student's costs of attendance as determined by the academic institution for the duration of the student's agreed upon health care academic program;

(B) fails to provide a full-time employment or practice opportunity for the student as a health care professional for which sponsored upon the student's certification or licensure; or

(C) fails to meet any of the conditions of the contract or this division.

(2) If the sponsor is found to be in breach of contract, the department may require any or all of the following:

(A) forfeiture of all claim to funds forwarded to the student;

(B) cancellation of the student's obligated period of service; and

(C) forfeiture of an opportunity to sponsor a student in the future.

(3) In the event of a sponsor breach of contract, the student may obtain alternative sponsorship, employment or practice opportunity in another rural community where loan forgiveness may be granted. In such an event, the original sponsor may not seek reimbursement from the student, another rural community sponsor, or the department.

(b) Breach by student.

(1) The student shall be in breach of contract if the student:

(A) fails to maintain satisfactory academic progress according to the academic institution the student attends except that one academic term of grace will may be extended to the student if the student is placed on scholastic probation;

(B) fails to attain satisfactory academic progress following an academic term of scholastic probation;

(C) voluntarily withdraws from or terminates enrollment in the agreed upon academic program or institution before completion of the agreed upon academic program;

(D) fails to complete the academic program according to the degree plan;

(E) ceases to be enrolled full-time in an academic program which requires full-time enrollment;

(F) fails to begin or complete the required practicum, internship or residency;

(G) fails to begin the obligated period of service within 60 days of attaining certification or licensure, or within 60 days of completing a residency program in the case of medical students;

(H) fails to complete the obligated period of service; or

(I) fails to meet any of the conditions of the contract or this division.

(2) Repeated reduction of credit hours during the course of the academic program may constitute breach of contract and the student may be removed from the ORSRP.

(3) The selection committee may unilaterally recommend removal of a student from the program if the student is not maintaining satisfactory academic progress to attain the prescribed degree.

(4) A student must sit for the first certification or licensure examination for which eligible upon completion of the academic program. If certification or licensure is delayed because of failure to pass the examination, the student shall retake it the next time the student is eligible to do so. If the student fails to become certified or licensed after the second attempt, the student shall be in breach of contract.

§30.147. Repayment.

(a) A student must repay the department costs of attendance paid for courses not completed. To recover funds, the department may:

(1) deduct the amount owed from the student's next scheduled loan disbursement;

(2) request the financial aid office of the academic institution the student attends to remit an institutional check for the amount owed; or

(3) require the student to repay the amount owed in the event the student will not receive any more loan disbursements.

(b) A student who is found to be in breach of contract must immediately pay the department liquidated damages equal to one time the total forgivable loan amount plus collection costs, fees and interest as specified in the contract or this section. If the student is unable to immediately pay the full amount due, the student may request a repayment plan.

(c) In the event the student breaches the contract by beginning but failing to complete the obligated period of service, the student shall pay to the department a prorated share of the damages based on the percent of the obligated period of service which has not been completed, plus collection costs, fees and interest as specified in the contract or this section.

(d) Interest assessed to a forgivable loan may be up to the highest rate allowed by law and shall commence with the date of the first disbursement.

(e) The department will forward to the sponsor its portion of the forgivable loan and accrued interest collected from the student. However, in the event the department is unsuccessful in collecting payment from the student, the department shall not be responsible for repaying the sponsor any forgivable loan portions or interest accrued on those portions.

(f) In the event a student fails or refuses to make payments as required by the department, the department may initiate collection procedures against the student in accordance with 4 TAC §1.52, and the department may report outstanding debts or loans in default to a national credit bureau to be placed on the students' credit reports.

§30.148. Cancellations and Postponements.

(a) The department may cancel a student's service or repayment obligation if it determines that:

(1) the student is unable to complete the academic program, internship or residency, attain certification or licensure, or practice health care because of a total and permanent disability verified by a sworn affidavit of a qualified physician; or

(2) the student has died and a court-certified copy of a death certificate or other evidence of death that is conclusive under state law has been submitted to the department.

(b) The cosigner of a promissory note shall not be responsible for loan repayment, accrued interest or other charges if the student dies or becomes totally and permanently disabled.

(c) The department may postpone the repayment requirement for a student who is enrolled at least half time at an eligible academic institution. A postponement period is not included when determining the maximum repayment period.

(d) The department may cancel or postpone repayment for a student who provides evidence of extreme financial hardship. In the case of postponement, the period of postponement will not be included in determining the maximum repayment period. The department may require periodic payments on the accrued interest during the postponement period.

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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DIVISION 3. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

4 TAC §§30.160 - 30.168

New Subchapter B, Division 3, Medically Underserved Community-State Matching Incentive Program, §§30.160 - 30.168 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides

authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.160. Purpose.

The purpose of the Medically Underserved Community-State Matching Incentive Program is to encourage physicians to provide primary care in medically underserved communities by contributing start-up money for physicians to establish a medical office in such communities. State grants match funds committed by medically underserved communities to cover start-up costs for primary care physicians' practices.

§30.161. Community Eligibility Criteria.

To be eligible to participate in this program, a community must:

(1) be a medically underserved community as defined in §487.201, Texas Government Code;

(2) exist in perpetuity as a non-profit entity governed by council members, commissioners, or a board of trustees that:

(A) is responsible to and serves the community in which it is located;

(B) is legally authorized to raise funds and/or accept grants and financial gifts from citizens, scholarship funds, or private foundations;

(3) not have filed bankruptcy;

(4) commit to contributing start-up month to an eligible physician in a minimum amount of $15,000 but not more than $25,000 per year for up to two years;

(5) apply for state matching funds available through this program; and

(6) contract with an eligible physician who agrees to provide primary care in the community for at least two years.

§30.162. Physician Eligibility Criteria.

To qualify for participation in this program, a physician must:

(1) hold a current, unrestricted license as a physician from the Texas Medical Board;

(2) have successfully completed a primary care residency program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association; a physician with less than ten post-residency years will be given priority;

(3) have contracted with an eligible community (that has made a financial commitment of at least the minimum contribution level) to provide primary care in the supporting community for at least two years;

(4) have never defaulted on nor currently owe a refund on any state, federal, or local student financial aid;

(5) not be delinquent in child support payments;

(6) have authorized a credit check and background check, the results of which are satisfactory to the sponsoring community; and

(7) have never been convicted of a felony.

§30.163. Application and Review.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements.

(b) The application must be on the forms and in the format prescribed by the department. The department must receive the application by the due date specified in the request for applications.

(c) The department will review each complete application to determine program eligibility, prioritize community need among applicants, and make recommendations for funding. An application in which the physician has less than ten post-residency years will be given priority. The department will not review late or incomplete applications.

§30.164. Awards and Appeals.

(a) The department may negotiate the amount of matching funds to be awarded to any applicant. Award amounts are based on the availability of funds. Contract awards shall not exceed $25,000, unless the department has determined that the application demonstrates exceptional financial need.

(b) An applicant who is denied funds under this program may file a written request for an administrative review of the denial. The request must be mailed to the department within ten working days of the date of the department's letter of denial. Upon receipt of the request, the department will conduct an administrative review, resulting in a final decision. The department will mail a written notice of the decision either upholding or overruling the denial to the applicant.

§30.165. Methodology for Prioritizing Communities.

The department will prioritize the communities found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify indicators of need (not listed in any assigned priority order) which may include, but are not limited to, the following:

(1) no practicing primary care physicians;

(2) with only one primary care physician and a population of at least 2,000;

(3) no federally or state-funded primary care clinic;

(4) no practicing physician assistants or nurse practitioners;

(5) the participating physician will be the only physician practicing in one of the primary care specialties;

(6) large minority population, if the participating physician is a member of the same minority group;

(7) designation by the United States Department of Health and Human Services as a primary care health professional shortage area for at least the last five years;

(8) a population-to-primary care provider ratio in the top 25% of all counties in the state;

(9) poverty rates above the state average; and

(10) median family incomes at least 25% below the state average.

§30.166. Contract Requirements.

The department will execute a written contract with each community selected concerning use of the state matching funds allocated under this program. The contract must include, but is not limited to, the following provisions:

(1) the community has obtained a credit check and information concerning the participating physician's professional background from reputable sources, including the National Practitioner Data Bank or its successor;

(2) the community will retain interest (title or ownership) in any property, equipment, or durable goods purchased with state or local matching funds disbursed under this program for a period of seven years;

(3) the community has executed a contract with an eligible physician containing at least the following provisions:

(A) the physician shall engage in clinical practice in the supporting community for at least two years following disbursement of the state funds;

(B) during the two-year service obligation, the physician shall not discriminate among patients seeking care based on their ability to pay or whether payment will be made through Medicaid or Medicare;

(C) the physician shall complete and submit provider enrollment applications for Medicare and the Texas Medicaid program, and shall accept Medicare assignment if enrolled; and

(D) the physician shall set his or her charges at the prevailing rate for the area and shall utilize a sliding fee scale based on the client's ability to pay;

(4) the community will make reasonable efforts to locate the physician's practice at a site readily accessible to a majority of area residents;

(5) the community will make a good faith effort to contract with a physician whose practice specialty is appropriate to serve the primary health care needs of area residents; and

(6) the community will attempt in good faith to replace a participating physician as quickly as possible after the physician fails to fulfill his or her two-year practice obligation, but the community may seek a replacement physician for no more than six months.

§30.167. Reporting and Monitoring.

(a) The supporting community must regularly monitor the participating physician's practice during the period of obligated service.

(b) The supporting community must submit quarterly progress reports to the department, as outlined in the program guidelines and contract, regarding:

(1) the expenditure of funds related to this program to cover physician practice start-up costs;

(2) patient outcomes as a result of accessing this program; and

(3) the status on the physician's compliance with the requirements specified in §30.165 of this division (relating to Methodology for Prioritizing Communities).

§30.168. Breach of Contract.

(a) A supporting community must notify the department in writing within two weeks of any change in its status or that of the participating physician.

(b) A supporting community shall be in breach of contract if the supporting community fails to:

(1) provide the full amount of funding specified in the contract; or

(2) fulfill any other conditions specified in the contract.

(c) In the event of a breach of contract, the department may require any or all of the following:

(1) forfeiture of all claim to funds and/or property acquired through use of the state matching funds disbursed through this program;

(2) cancellation of the physician's obligation of service in the supporting community;

(3) reimbursement by the supporting community to the department of state matching funds; and

(4) forfeiture of the opportunity to participate in the program or other rural health programs administered by the department in the future.

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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DIVISION 4. TEXAS HEALTH SERVICE CORPS PROGRAM

4 TAC §§30.180 - 30.185

New Subchapter B, Division 4, Texas Health Service Corps Program, §§30.180 - 30.185 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.180. Purpose.

The purpose of the Texas Health Service Corps Program is to encourage physicians trained in the primary care specialties to establish and maintain practices in medically underserved areas in Texas by providing stipends to resident physicians who agree to practice, upon completion of residency training, in a medically underserved area of the state.

§30.181. Application Procedure.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements.

(b) The application must be on the forms and in the format prescribed by the department, and submitted to the department by the deadline specified in the request for applications. Late or incomplete applications will not be considered.

§30.182. Requirements for Registering Medically Underserved Communities.

(a) A health care entity located in a county designated as a medically underserved area and/or a health professional shortage area is eligible to register to participate in the program.

(b) The department ranks eligible communities for program participation based on a community's need for primary care physicians and other factors including, but not limited to, the county's MUA score or HPSA degree of shortage designation.

(c) Communities register for the program by completing a registration form prescribed by the department during a time period specified by the department.

(d) A community that is accepted into the program and that is matched with an eligible physician is ineligible to re-register for participation until the physician has fulfilled the service obligation.

§30.183. Requirements for Registering Resident Physicians.

(a) A resident physician is eligible to register for participation in the program if the physician:

(1) is enrolled in an accredited Texas residency training program in a primary care specialty;

(2) has not defaulted on any educational loans; and

(3) does not have a service obligation to any entity.

(b) An individual who is a fourth year medical student may be eligible to register for participation in the program if the individual meets the requirements provided in subsection (a)(1) - (3) of this section by the application deadline.

(c) Eligible physicians register for the program by completing a registration form prescribed by the department during a time period specified by the department.

(d) The department may rank physician applicants by the type of primary care specialty the physician has selected or by the number of years remaining to complete the residency program.

(e) A physician receiving assistance under any local, state, or federal educational loan repayment or incentive program is ineligible to receive a stipend under this program. A physician with any service obligation to any entity also is ineligible to receive a stipend.

§30.184. Matching Eligible Communities with Eligible Resident Physicians.

(a) The department sends the ranked profiles of all registered resident physicians to all the registered communities, and the ranked profiles of all registered communities to the registered resident physicians.

(b) Upon receipt of the profiles, eligible communities and eligible physicians may contact each other to determine if the community is suitable for the physician and the physician is suitable for the community. Once a match between a community and a physician is made, the community and the physician complete a joint application and submit it to the department by the deadline provided in the request for applications.

(c) Resident physicians and communities making a match prior to initiating the registration process may both jointly register and apply simultaneously. The department will not distribute the ranked profiles of these matched resident physicians and communities to the pool of unmatched ranked registered resident physicians and communities.

(d) The department reviews the joint applications and awards stipends to resident physicians matched with communities ranked as having the greatest need for a primary care physician.

§30.185. Conditions of Award.

(a) A resident physician selected to receive a stipend must enter into a written contract with the department before the award is received. The contract must specify that:

(1) within 90 days of completion of the residency program for first board eligibility, the physician must initiate a medical practice to provide physician services, as defined by the contract, in a medically underserved area for one year for each year that the physician receives a stipend;

(2) the physician must not discriminate against patients seeking care based on their ability to pay or whether payment is made through Medicaid or Medicare;

(3) the physician must accept Medicare assignment and make every attempt to enroll as a provider in the Medicare and Texas Medicaid Programs unless enrollment is denied by either the Medicare or Texas Medicaid Programs;

(4) the physician must cooperate with the department in its efforts to collect information and data relevant to the program;

(5) the physician must keep the department informed of all changes in address and phone number during the service obligation period; and

(6) the department will report a physician whose repayment account is delinquent, or who fails to repay his or her cash obligation, to the Texas Medical Board for appropriate action.

(b) The department may withdraw a stipend if it determines the resident physician is no longer eligible to qualify for participation in the program.

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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DIVISION 5. RURAL HEALTH FACILITY CAPITAL IMPROVEMENT PROGRAM

4 TAC §§30.200 - 30.203

New Subchapter B, Division 5, Rural Health Facility Capital Improvement Program, §§30.200 - 30.203 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.200. Purpose.

The Rural Health Facility Capital Improvement Program provides assistance to public and non-profit hospitals located in a rural county in

Texas to make capital improvements to existing health facilities, construct new health facilities, or purchase capital equipment.

§30.201. Eligibility and Application Requirements.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements. The application must be on the forms and in the format prescribed by the department.

(b) Grants, loans or loan guarantees are awarded by the department through a competitive process according to the provisions of this division and the request for applications.

(c) A public or nonprofit hospital located in a rural county, as defined in §487.301 of the Texas Government Code, is eligible to apply for funds.

(d) A hospital that has received a grant under the Community Hospital Capital Improvement Fund from the Department of State Health Services may not also receive a grant, loan, or loan guarantee under this program.

(e) Applications that are received after the closing date, incomplete or substantially inconsistent with the requirements of this division and the request for applications may be rejected without further consideration at the discretion of the department.

§30.202. Application Review and Selection Criteria.

(a) Each application will be reviewed by the department for completeness, relevance to the published request for applications, adherence to department policies, general quality, technical merit, and budget appropriateness.

(b) The department may invite advisors from outside the department to review applications and make recommendations for funding. Advisors from outside the department shall receive no compensation or reimbursement for expenses. Advisors may not be a current or potential applicant for a grant, loan, or loan guarantee on which the advisors would be making recommendations.

(c) An application from a public hospital will be given preference over an application from a nonprofit hospital.

(d) Evaluation of an application will consider applicant information relating to criteria delineating the health care needs of the rural area and community served by the applicant, the financial need of the applicant related to the specific project, and the probability that the applicant will effectively and efficiently use the money obtained through a grant, loan or loan guarantee.

§30.203. Conditions of Award.

(a) Awarded funds may not be used for any costs incurred by an applicant in the development, preparation, submission, or review of applications.

(b) Awarded funds may be used only for capital improvements and may not be used for operating expenses, debt retirement, or recruitment or retention of practitioners.

(c) Loans awarded will be made with an interest rate below the current market rate and may be made at no interest at the discretion of the department based upon the financial need and condition of the applicant.

(d) Grant, loan and loan guarantee recipients must execute a contract with the department which will include the budget, reporting requirements, general provisions for department contracts, and any other specifics that might apply to the award.

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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DIVISION 6. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

4 TAC §§30.220 - 30.222

New Subchapter B, Division 6, Designation of a Hospital as a Rural Hospital, §§30.220 - 30.222 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.220. Purpose.

(a) For purposes of the Medicare inpatient hospital prospective payment system (42 U.S.C. 1395ww), a prospective payment hospital located in an urban area may be reclassified as a rural hospital if it meets certain conditions. The Secretary will treat a hospital as being located in the rural area of the state in which the hospital is located if the hospital is located in an area designated as a rural area by state law or regulation, or the hospital is designated as a rural hospital by state law or regulation.

(b) In accordance with §487.401, Texas Government Code, this division establishes the procedures under which the department will designate a hospital as a rural hospital in order for the hospital to qualify for federal funds under 42 CFR Part 412, "Prospective Payment Systems for Inpatient Hospital Services."

§30.221. Criteria for Designation.

To be considered for designation as a rural hospital, a hospital must meet the following criteria:

(1) is located in a county with a population density of less than 225 persons per square mile of land area; and

(2) is located in a municipality of 15,000 persons or less.

§30.222. Procedures for Designation.

(a) The department will accept a request for designation only by letter.

(b) The request must include the following:

(1) name of the hospital as it appears on its hospital license;

(2) an explanation of how the hospital meets the criteria that constitute the basis of the request for designation set forth in

§30.121 of this subchapter (relating to Definitions), including data and documentation necessary to support the request; and

(3) signature of the chief administrative officer or chairperson of the hospital's board of directors.

(c) The department will review each request and notify the requesting hospital of its final decision.

(d) Once a hospital has received its designation as a rural hospital from the department, the hospital is responsible for applying directly to the Centers for Medicare and Medicaid Services for reclassification under Medicare provisions.

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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DIVISION 7. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

4 TAC §§30.240 - 30.244

New Subchapter B, Division 7, Rural Communities Health Care Investment Program, §§30.240 - 30.244 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.240. Purpose.

The Rural Communities Health Care Investment Program assists rural communities in recruiting health professionals to practice in medically underserved communities by providing loan reimbursement or stipends to health professionals who serve or agree to serve in those communities.

§30.241. Eligibility and Application Requirements.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements. The application must be on the forms and in the format prescribed by the department.

(b) To be eligible to apply for a loan reimbursement or stipend, an applicant must meet the following criteria:

(1) is a health professional as defined in §487.551 of the Texas Government Code;

(2) is a resident of the state of Texas;

(3) does not have a service obligation to any entity or participate in any educational loan reimbursement program or other incentive program; and

(4) meets other eligibility or program requirements specified in the guidelines and request for applications.

(c) An educational loan is not eligible for reimbursement if it:

(1) was a self-made educational loan from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(2) involves a service obligation; or

(3) is in default at the time of application.

(d) Applications that are received after the closing date, incomplete or substantially inconsistent with the requirements of this division and the request for applications may be rejected without further consideration at the discretion of the department.

§30.242. Application Review and Selection Criteria.

(a) Each application will be screened by the department for eligibility and completeness.

(b) The department may invite advisors from outside the department to evaluate eligible applications. Advisors from outside the department shall receive no compensation or reimbursement for expenses. Advisors may not be a current or potential applicant for a grant on which the advisors would be making recommendations.

(c) Applications are scored based on evaluation criteria which may include, but are not limited to, the following:

(1) type of assistance (loan reimbursement or stipend);

(2) ineligibility for any other state loan forgiveness, loan repayment, or stipend program;

(3) graduation from health professional degree programs in Texas;

(4) use of telecommunications or telemedicine, as appropriate;

(5) commitment from a qualifying community served by the health professional to contribute to the cost of the loan reimbursement or stipend; and

(6) community needs.

(d) The department will prioritize the provision of loan reimbursements and stipends to health professionals who meet one or more criteria provided in subsection (c)(2) - (5) of this section.

(e) Reviewer scores will be averaged and the highest scoring applications will be selected for funding.

(f) Health professionals selected for funding may only receive a one-time award of assistance.

§30.243. Conditions of Award.

(a) A health professional may receive a loan reimbursement or stipend only if the health professional signs a contract agreeing to provide health care services in a medically underserved community for a period of at least 12 consecutive months.

(b) Loan reimbursement and stipend recipients must comply with applicable state law, program requirements and grant terms, including but not limited to the following:

(1) provide health care services in the qualifying community for the duration of the obligated service period;

(2) provide health services to participants of government-funded health benefits programs in the qualifying community;

(3) cooperate with the department in its efforts to collect information and data relevant to the program;

(4) notify the department in writing within 30 days of any change in address or other relevant contact information during the contract term; and

(5) submit periodic statements to the department certifying compliance with program and contractual requirements, in accordance with reporting timelines provided in the contract. Failure to comply with reporting requirements may result in the withholding of funds and/or termination of the award.

(c) Funds will not be released to the recipient until the recipient has begun working in the qualifying community. Failure to satisfy all award terms will result in termination of the contract and required repayment to the department.

§30.244. Breach of Contract.

(a) A health professional shall be in breach of contract if the health professional:

(1) does not provide the required services in the qualifying community or provides those services for less than the required term; or

(2) fails to meet any condition of the contract or this division.

(b) A health professional found to be in breach of contract is liable to the department for:

(1) the total amount of assistance the health professional received from the department and the medically underserved community;

(2) interest on that amount at a rate set by the department;

(3) the state's reasonable expenses incurred in obtaining payment, including a reasonable attorney's fees; and

(4) a penalty as established by the department.

(c) Interest assessed may be up to the highest rate allowed by law and shall commence with the date of the first disbursement.

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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DIVISION 8. RURAL PHYSICIAN RELIEF PROGRAM

4 TAC §§30.260 - 30.262

New Subchapter B, Division 8, Rural Physician Relief Program, §§30.260 - 30.262 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.260. Purpose.

The purpose of the Rural Physician Relief Program is to provide affordable relief services to rural physicians to facilitate the ability of those physicians to take time away from their practice.

§30.261. Eligibility Requirements.

To be eligible to participate in the program, a physician must:

(1) be practicing in the fields of general family medicine, general internal medicine, or general pediatrics; and

(2) be practicing in a rural community as defined in §487.601, Texas Government Code.

§30.262. Requirements for Requesting Relief Services.

(a) A physician requesting relief services will be required to submit an application to the department. The application must be on the forms and in a format prescribed by the department.

(b) The department will review each application to determine program eligibility and to prioritize community need among applicants.

(c) Physicians must pay a fee charged by the department to participate in the program.

(d) A contract will be developed between the department and the physician requesting relief services, or the department will require a contract, with specified language, between the community physician and the relief physician.

(e) The department will pay a relief physician a fair and equitable rate, using fees collected by the department, for providing relief services in a qualifying rural community.

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
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DIVISION 9. RURAL TECHNOLOGY CENTER GRANT PROGRAM

4 TAC §§30.280 - 30.283

New Subchapter B, Division 9, Rural Technology Center Grant Program, §§30.280 - 30.283 are proposed under Texas Government Code §487.051, which provides the department authority

to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.280. Purpose.

The Rural Technology Center Grant Program provides assistance to public institutions of higher education, public high schools, and governmental entities located in a rural county in Texas for the development and operation of multi-institutional technology centers in order to increase community access to technology and promote computer literacy. Centers provide resources to prepare residents, including high school students, for careers in applied technology and other skilled industries.

§30.281. Eligibility and Application Procedures.

(a) Subject to available funding for this program, the department will publish a notice of grant availability and request for applications, which will include all necessary details about the program and application requirements.

(b) Public institutions of higher education, including public junior colleges to the extent possible, public high schools, or governmental entities in a rural county are eligible to apply to the program.

(c) The department may specify any reasonable requirements for grant applications, including, but not limited to, length, format, authentication, and supporting documentation.

(d) Applications that are late, incomplete or substantially inconsistent with the requirements of this division and the request for applications may be rejected without further consideration at the discretion of the department.

(e) Each application will be reviewed by the department for completeness, relevance to the published request for applications, adherence to department policies, general quality, technical merit, and budget appropriateness.

(f) The department may weigh scoring for factors including cost per beneficiary, distress, per capita income, unemployment, innovativeness, and matching or leveraged funds.

§30.282. Contract Requirements.

(a) A grant recipient must execute a contract with the department, which includes, but is not limited to: term, budget, reporting requirements, general provisions for department contracts, and any other specific information that might apply to the award or be needed by the department.

(b) Use of grants shall be restricted to the construction, equipment, utilities, and other items as specified by the department that are necessary for the ongoing maintenance and operation of the centers.

§30.283. Monitoring, Reporting, and Compliance.

(a) Grant recipients shall cooperate with the department in compliance with the conditions of the grant and monitoring the use of the grants awarded.

(b) Grant recipients shall submit periodic reports to the department, with content, form and time determined by the department.

(c) Grant recipients shall maintain all records required by the department and applicable state laws.

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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DIVISION 10. RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

4 TAC §§30.300 - 30.302

New Subchapter B, Division 10, Rural Physician Assistant Loan Reimbursement Program, §§30.300 - 30.302 are proposed under Texas Government Code §487.051, which provides the department authority to administer programs supporting rural health in this state, as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. §254r, and §487.052, which provides authority for the department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is the Texas Government Code Chapter 487.

§30.300. Purpose.

(a) The Rural Physician Assistant Loan Reimbursement Program is established under the Physician Assistance Licensing Act, §204.104 of the Texas Occupations Code. The purpose of the program is to encourage qualified physician assistants to practice in rural health professional shortage areas and medically underserved areas in Texas where there is a high need for primary health care providers by providing student loan reimbursement for graduates of physician assistant training programs who practice in such areas.

(b) The physician assistant board funds the program by designating annually a portion of the revenue generated from physician assistant licensing fees, and authorizing the Texas Medical Board to transfer annually the designated funds to the department to administer the program.

§30.301. Eligibility Requirements.

(a) An educational loan is eligible for repayment if it was obtained through an eligible lender for purposes of attending a post-secondary institution.

(b) An educational loan is not eligible for repayment if it:

(1) was a self-made educational loan from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(2) involves a service obligation; or

(3) is in default at the time of the physician assistant's application.

(c) An eligible lender or holder may include, and is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company. An eligible lender or holder may not be any private individual.

(d) To be eligible for loan reimbursement under this program, a physician assistant must meet the following criteria:

(1) passed the certifying examination administered by the National Commission on Certification of Physician Assistants and is licensed to practice as a physician assistant in Texas by the Texas Medical Board;

(2) has not been subject to professional disciplinary action by any state or federal licensing agency or any professional physician assistant association or society whether the society is local, regional, state, or national in scope;

(3) has not been disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, or limitation of hospital privileges, or other disciplinary action;

(4) satisfactorily completed an approved physician assistant training program within ten years prior to the date of application; and

(5) completed a minimum of one period of service as a physician assistant in a health professional shortage area or medically underserved area in Texas.

§30.302. Application and Selection Process.

(a) Subject to available funding for this program, the department will publish a notice of fund availability and request for applications, which will include all necessary details about the program and application requirements. The application must be on the forms and in the format prescribed by the department.

(b) Applicants practicing in areas with the highest degree of shortage and/or lowest Index of Medical Services (IMU) score will be given priority.

(c) Selected recipients will receive payments for reimbursement of eligible educational loans at a time specified by the department and under the following conditions:

(1) total annual reimbursement to one or more eligible lenders or holders must not exceed the recipient's unpaid principal loan balance, including capitalized interest, from all sources, or a maximum of $5,000, whichever is less. Depending upon the availability of funds and the number of qualifying applicants, the department may establish an annual reimbursement amount below $5,000 per eligible recipient; however, the minimum total annual payment cannot be less than $2,500 per eligible recipient unless the recipient's total unpaid principal loan balance is below $2,500;

(2) each period of service must be completed before reimbursement is made;

(3) loan reimbursement may be renewed annually but for no more than a total of four periods of service and total maximum reimbursement amount of $20,000;

(4) annual payment is made co-payable to the recipient and to the eligible lender(s) or holder(s) and applied only to the outstanding principal balance of the education loan, including capitalized interest; and

(5) recipients are responsible for payment of any and all state and federal taxes to which this loan reimbursement is subject.

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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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.1, §51.14

The Texas Animal Health Commission (commission) proposes amendments to §51.1, concerning Definitions, and §51.14, concerning Swine, in Chapter 51, which is entitled "Entry Requirements".

The purpose of the amendments is to make swine entry requirements and identification more consistent with the current federal interstate movement requirements. The United States Department of Agriculture (USDA) amended its regulations and established minimum national official identification and documentation requirements for the traceability of livestock moving interstate. Under USDA's rulemaking, unless specifically exempted, livestock belonging to species covered by the regulations must be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation. These regulations specify approved forms of official identification for each species, but allow the livestock covered under this rulemaking to be moved interstate with another form of identification, as agreed upon by animal health officials in the shipping and receiving States or Tribes. The effective date of the USDA rule was March 11, 2013, and it is found in 9 CFR Part 86.

FISCAL NOTE

Ms. Larissa Schmidt, Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the rules. An Economic Impact Statement (EIS) is required if the proposed rules have an adverse economic effect on small businesses. The agency has evaluated the requirements and determined that there is not an adverse economic impact and, therefore, there is no need to do an EIS. Implementation of these rules poses no significant fiscal impact on small or micro-businesses, or to individuals.

PUBLIC BENEFIT NOTE

Ms. Schmidt has also determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to conform commission swine identification entry requirements to the standards accepted and utilized by other states and USDA.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Texas Government Code §2001.022, this agency has determined that the proposed rules will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The proposed amendments are an activity related to the handling of animals, including requirements for testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by email to "comments@tahc.texas.gov".

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by §161.041, entitled "Disease Control", with the requirement to protect all livestock, domestic animals, and domestic fowl from disease.

Pursuant to §161.041(b), the commission may act to eradicate or control any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl or exotic fowl. The commission may adopt any rules necessary to carry out the purpose of this subsection.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.056(a), entitled "Animal Identification Program", the commission, in order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, may develop and implement an animal identification program that is no more stringent than a federal animal disease traceability or other federal animal identification program. Section 161.056(d) authorizes the commission to by a two-thirds vote adopt rules to provide for an animal identification program more stringent than a federal program only for control of a specific animal disease or for animal emergency management.

Pursuant to §161.081, entitled "Importation of Animals", the commission by rule may regulate the movement, including movement by a railroad company or other common carrier, of livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl into this state from another state, territory, or country.

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

§51.1. Definitions.

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

(1) Accredited veterinarian--A licensed veterinarian who is approved to perform specified functions required by cooperative state-federal disease control and eradication programs pursuant to Title 9 of the Code of Federal Regulations, Parts 160 and 161.

(2) Animal--Includes livestock, exotic livestock, domestic fowl, and exotic fowl.

(3) Assembly--Boarding stables, boarding pastures, breeding farms, parades, rodeos, roping events, trail rides, and training stables.

(4) Certificate of veterinary inspection--A document signed by an accredited veterinarian that shows the livestock, poultry, exotic livestock, or exotic fowl listed were inspected and subjected to tests, immunizations, and treatment as required by the commission. Certificates are valid for 45 days for equine and 30 days for all other species.

(5) Cervidae--Deer, elk, moose, caribou and related species in the cervidae [~~Cervidae~~] family, raised under confinement or agricultural conditions for the production of meat or other agricultural products or for sport or exhibition, and free-ranging cervidae when they are captured for any purpose.

(6) Commission--The Texas Animal Health Commission.

(7) Commuter Flock--A National Poultry Improvement Plan (pullorum-typhoid clean or equivalent) flock in good standing with operations in participating states that are under single ownership or management control whose normal operations require interstate movement of hatching eggs and/or baby poultry without change of ownership for purposes of hatching, feeding, rearing or breeding. The owner or representative of the company owning the flock and chief animal health officials of participating states of origin and destination must have entered into a signed "Commuter Poultry Flock Agreement."

(8) Commuter Cattle Herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(9) Commuter Swine Herd--A swine herd located in two or more states that is documented as a valid ranching operation by those

states in which the herd is located and which requires movement of swine interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(10) Equine interstate passport--A document signed by an accredited veterinarian that shows the equine listed were inspected, subjected to tests, immunizations and treatment as required by the issuing state animal health agency, and contains a description of the equine listed. The passport is valid for six months when accompanied by proof of an official negative EIA test within the previous six months. Permanent individual animal identification in the form of a lip tattoo, brand or electronic implant is required for all equine approved for the equine interstate passport. This document is valid for equine entering from any state that has entered into a written agreement to reciprocate with Texas.

(11) Equine identification card--A document signed by the owner and a brand inspector or authorized state animal regulatory agency representative that lists the animal's name and description and indicates the location of all identifying marks or brands. This document is valid for equine entering from any state which has entered into a written agreement to reciprocate with Texas.

(12) Exotic livestock--Grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(13) Exotic fowl--Any avian species that is not indigenous to this state. The term includes ratites.

(14) Interstate show--A show, fair, or exhibition that permits livestock and poultry from other states to enter for show or exhibition and be held in common facilities with Texas origin livestock and poultry of the same species.

(15) Livestock--Cattle, horses, mules, asses, sheep, goats, and hogs.

(16) Owner-shipper statement--A statement signed by the owner or shipper of the livestock being moved stating the location from which the animals are moved interstate; the destination of the animals; the number of the animals covered by the statement; the species of the animal covered; the name and address of the shipper; and the identification of each animal as required by the commission or the United States Department of Agriculture (USDA).

(17) Permit--A document recognized by the commission with specified conditions relative to movement, testing and vaccinating of animals which is required to accompany the animals entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of animals into the state by the commission. The "E" permit states the conditions under which movement may be made, and will provide any appropriate restrictions and test requirements after arrival. The permit is valid for 15 days.

(B) VS 1-27 (VS Form 1-27)--A premovement authorization for movement of animals to restricted designations.

(18) Purebred registry association--A swine breed association formed and perpetuated for the maintenance of records of purebreeding of swine species for a specific breed whose characteristics are set forth in constitutions, by-laws, and other rules of the association.

(19) [~~(18)~~] Radio Frequency Identification Device (RFID)--Official individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

(20) [~~(19)~~] Sponsor--An owner or person in charge of an exhibition, show or fair.

§51.14. Swine.

(a) Swine imported into Texas for feeding, breeding, or exhibition purposes shall be accompanied by a certificate of veterinary inspection certifying that:

(1) swine have not been fed garbage, either raw or cooked;

(2) swine have not been exposed to pseudorabies;

(3) swine have not been vaccinated for pseudorabies;

(4) for non-commercial swine entering Texas for purposes other than immediate slaughter, swine have not originated from a premises known to be affected by Novel Swine Enteric Coronavirus Disease(s) (SECD), and have not been exposed to SECD within the last 30 days; and

(5) swine have been permanently identified with one of the following: [~~(eartag, earnotched, or number tattoo).~~]

(A) official identification eartag approved by the commission or USDA;

(B) ear notching, if the ear notching has been recorded in the book of record of a purebred registry association;

(C) tattoos on the ear or inner flank, if the tattoos have been recorded in the book of record of a swine registry association; or

(D) any other official identification device or method that is approved by the commission.

(b) Swine not known to be infected with or exposed to pseudorabies, and originate from a state not classified as Stage IV or V, may enter provided they:

(1) are tested negative within 30 days prior to entry and then held in isolation and under quarantine on the premise where first unloaded and tested or retested for PRV in not less than 30 nor more than 60 days after arrival. Feeder swine are exempt from the retest provided that the swine enter on an entry permit from the commission and are destined directly to a designated feedlot and remain restricted to the feedlot until they are sent to slaughter; or

(2) originate from a qualified PRV-negative herd; or

(3) are shipped directly from a farm of origin in a Stage IV or free state or area as described in the National PRV Program; or

(4) originate from and are sold at an approved feeder-pig market in a Stage IV or free state or area and enter the state directly from that market.

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis-free herd or state and shall be vaccinated within the previous 30 days with Leptospirosis vaccine containing the following strains: Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

(d) Exhibition swine originating in Texas entered in terminal shows are exempt from brucellosis and pseudorabies requirements.

(e) Swine imported into Texas for slaughter purposes shall either be consigned directly to slaughter or to a federally approved live-

stock market where a VS 1-27 will be issued to accompany them to slaughter following sale.

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-201404742
Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0724

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.455

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 86, §86.455, regarding the Vehicle Towing and Booting program.

The proposed amendments are necessary to implement Texas Occupations Code, §2308.0575(f) which requires the Department to conduct a study on private property towing fees at least once every two years. The proposed increases to the maximum amounts that may be charged for private property tows were calculated based on changes in the Consumer Price Index (CPI) for 2013 and 2014. The specific cost components used in the calculation include: (1) motor vehicle maintenance and repair; (2) vehicle insurance; and (3) gasoline (Southern States). If other cost components are more industry specific, the Department encourages commenters to identify the other cost components and provide cites to the sources of the alternative CPI adjustments.

The proposed amendments to §86.455 are a result of the mandated study and increase the maximum amount that may be charged for private property light duty tows ($255), medium duty tows ($357), and heavy duty tows ($459 per unit, not to exceed $918). The proposed amendments also increase the amounts that may be charged by tow companies for dropping the vehicle instead of towing it to a licensed vehicle storage facility. The maximum amount that may be charged dropping the vehicle in place is $127 for light duty tows, $178 for medium duty tows, and $229 for heavy duty tows.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed rules. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed rule.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit by knowing the maximum amount that may be charged for private property tows in areas not regulated by local authorities.

The anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as amended will be *de minimis* and inconsequential. Therefore, there will be no adverse effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

§86.455. Private Property Tow Fees.

(a) (No change.)

(b) The maximum amount that may be charged for private property tows is as follows:

(1) light duty tows--$255 [~~$250~~];

(2) medium duty tows--$357 [~~$350~~]; and

(3) heavy duty tows--$459 [~~$450~~] per unit or a maximum of $918 [~~$900~~].

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property or parked location, the maximum amount that may be charged for a drop charge (if the motor vehicle is hooked up) is:

(1) light duty tows--$127 [~~$125~~];

(2) medium duty tows--$178 [~~$175~~]; and

(3) heavy duty tows--$229 [~~$225~~].

(d) - (e) (No change.)

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

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TRD-201404801

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-8179

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER I. LICENSES

22 TAC §§535.94 - 535.96

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

The Texas Real Estate Commission (TREC) proposes the repeal of existing 22 TAC §§535.94 - 535.96 in Chapter 535, General Provisions.

The proposed revisions to Chapter 535 are made following a comprehensive quadrennial rule review of this chapter to better reflect current TREC procedures, to simplify and clarify where needed and to improve overall readability. To accomplish this, redundant or unused provisions were removed and certain rules were restructured in whole or in part. Rules that are no longer needed or that have been totally rewritten are being proposed for repeal.

The proposed revisions repeal §§535.94 - 535.96 since applicable provisions were either moved to another section or no longer needed.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeals. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the repeals. There is no anticipated economic cost to persons who are required to comply with the proposal.

Ms. Lewis also has determined that for each year of the first five years the repeals as proposed are in effect, the public benefit anticipated as a result of enforcing the repeals will be better clarity and requirements that are easier to understand, apply, and process.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 14 days after publication in the *Texas Register.*

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposal.

§535.94. Hearing on Application Disapproval: Probationary Licenses.

§535.95. Miscellaneous Provisions Concerning License or Registration Applications or Renewals, Including Fingerprinting Requirements.

§535.96. Mailing Address and Other Contact 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 October 10, 2014.

TRD-201404744
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 936-3092

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 30. MEDICAID HOSPICE PROGRAM

SUBCHAPTER B. ELIGIBILITY REQUIREMENTS

40 TAC §30.14

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §30.14, concerning certification of terminal illness, in Chapter 30, Medicaid Hospice Program.

BACKGROUND AND PURPOSE

The proposal aligns §30.14 with the requirements of 42 CFR §418.22, regarding the certification of terminal illness and maintenance of records.

The proposed rules also make minor editorial and organizational changes for readability, clarity, and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §30.14 clarifies that a hospice must obtain an oral certification of terminal illness from a physician only if it does not obtain a written certification within two calendar days after a care coverage period begins. The proposed amendment requires a certification statement to include a narrative that identifies why the individual is considered terminally ill. The proposed amendment provides that a certification statement must identify the individual's need for hospice services and

indicate the basis for the individual's medical prognosis. The proposed amendment clarifies the sources of certification for an initial period of care and for subsequent periods. The proposed amendment provides that an advanced practice registered nurse or physician must perform a face-to-face assessment of an individual to determine the individual's continued eligibility for hospice care for a subsequent period of care not more than 30 calendar days before each period. The proposed amendment explains that, for an individual who is dually eligible for Medicare and Medicaid, the Medicare face-to-face encounter suffices for a face-to-face assessment required by this section. The proposed amendment specifies that a hospice must retain certain documents, including documentation of the face-to-face assessment or the face-to-face encounter. If an individual resides in a nursing facility or intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), the proposed amendment requires the hospice to provide a copy of certain documentation to the nursing facility or ICF/IID in which the individual resides.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses because the rules do not add new responsibilities for hospice providers.

PUBLIC BENEFIT AND COSTS

Elisa J. Garza, DADS Assistant Commissioner for Access and Intake, has determined that, for each year of the first five years the new amendments are in effect, the public will benefit by aligning the rule with federal requirements regarding certification and maintenance of records. For an individual who is dually eligible for Medicare and Medicaid, the proposed amendment allows a Medicare face-to-face encounter to satisfy the requirements of the Medicaid face-to-face assessment.

Ms. Garza anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Schnina Reed at (512) 438-2973 in DADS Access & Intake, Community Services Policy. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-13R26, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030 or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 13R26" in the subject line.

STATUTORY AUTHORITY

The amendments are proposed 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; 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §161.021 and §32.021.

§30.14. Certification of Terminal Illness and Record Maintenance.

(a) Timing of certification.

(1) If a hospice does not obtain the written certification statement required by paragraph (2) of this subsection within two calendar days after a period of care begins, the [~~The~~] hospice must obtain an [~~the~~] oral certification statement that meets the requirements of this section [~~of terminal illness from a physician~~] no later than two calendar days after the period begins. A period of care is described in §30.12 of this subchapter (relating to Duration of Hospice Care Coverage: Election Periods).

(2) For the initial period of care, a hospice must obtain a signed and dated [~~the physician(s) must sign and date the~~] Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the hospice submits an initial request for payment, but no more than 15 days before the period begins. For a period of care after the initial period, a hospice must obtain a signed and dated Medicaid Hospice Program Physician Certification of Terminal Illness form that meets the requirements of this section before the period expires, but no more than 15 days before the period begins. [~~The physician must sign and date the Medicaid Hospice Program Physician Certification of Terminal Illness form in all cases before the expiration date of each six-month certification period. Forms must be submitted by the hospice as outlined in §30.62 of this chapter (relating to Medicaid Hospice Claim Requirements) and must be submitted before billing.~~]

(b) Content of certification statement. An oral or written [~~The~~] certification statement must:

(1) specify that an [~~the~~] individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course;[~~. The certification statement must be based on record review or consultation with the referring physician.~~]

(2) include a narrative that clearly identifies the reasons the individual is considered terminally ill;

(3) identify the individual's need for hospice services, which include the palliation and management of the terminal illness and conditions related to the terminal illness, in the areas of medical, nursing, social, emotional, and spiritual care; and

(4) indicate that it is based on consultation, specific clinical information, or other documentation that supports the medical prognosis.

(c) Sources of certification. The [~~For the initial period, the~~] hospice must obtain a written or oral certification statement [~~statements, and oral certification statements if~~] required by [~~under~~] subsection (a)[~~(2)~~] of this section[~~,~~] from:

(1) for the initial period of care:

(A) the medical director of the hospice or the physician who is a member of the hospice interdisciplinary group; and

(B) [~~(2)~~] the individual's attending physician, if the individual has an attending physician; and[~~.~~]

(2) for a period of care after the initial period, a physician described in paragraph (1)(A) of this subsection.

(d) Documentation.

(1) After the hospice receives a [~~Upon receipt of the~~] certification statement, hospice staff must:

(A) for an oral certification statement:

(i) make an [~~appropriate~~] entry that meets the requirements of paragraph (2) of this subsection in the individual's hospice [~~in the patient's medical~~] record; and [~~as soon as they receive an oral certification;~~]

(ii) if the individual resides in a nursing facility or an intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID), notify the nursing facility or the ICF/IID of the [~~or the intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC) of~~] oral certification[~~, when applicable~~]; and

(B) for a [~~file~~] written certification statement: [~~certifications~~]

(i) file the statement in the individual's hospice [~~medical~~] record; and[~~.~~]

(ii) if the individual resides in a nursing facility or an ICF/IID, provide the nursing facility or the ICF/IID with a copy of the written certification.

(2) An entry made in an individual's hospice record in accordance with paragraph (1)(A)(i) of this subsection [~~Documentation~~] must include the name of the physician who made [~~makes~~] the oral certification and the date the hospice received the certification [~~it was received~~]. The hospice staff person [~~individual~~] who makes the entry into the individual's hospice [~~recipient's~~] record must sign and date the entry.

(e) Face-to-face [~~Client-specific~~] assessment. To determine an individual's continued eligibility for hospice care for a period of care after the initial period, as described in §30.12 of this subchapter, a hospice physician or hospice advanced practice registered nurse must perform a face-to-face assessment of the individual.

(1) The hospice must ensure a face-to-face assessment is performed before each subsequent period of care begins, but no more than 30 calendar days before the period begins.

(2) For an individual who is dually eligible for Medicare and Medicaid, a Medicare face-to-face encounter satisfies the requirement for a face-to-face assessment required by this subsection.

[~~(1) For subsequent periods after the first year, the hospice must conduct a client-specific comprehensive assessment that:~~]

[~~(A) identifies the client's need for hospice services in the areas of medical, nursing, social, emotional, and spiritual care. Hospice services include, but are not limited to, the palliation and management of the terminal illness and conditions related to the terminal illness; and~~]

[~~(B) contains a narrative from the physician that clearly identifies the reasons the patient is considered terminally ill, with a prognosis of less than six months to live.~~]

[~~(2) The assessment must be done no earlier than 30 workdays before the recertification date.~~]

(f) Records.

(1) The hospice must retain in an individual's hospice record documentation to support the services provided by the hospice, including:

(A) the documentation required by subsection (d) of this section;

(B) a current Minimum Data Set assessment if the individual resides in a nursing facility, or a level-of-need assessment if the individual resides in an ICF/IID; and

(C) documentation of a face-to-face assessment or a face-to-face encounter described in subsection (e) of this section.

(2) If an individual resides in a nursing facility or ICF/IID, the hospice must provide a copy of the documentation described in paragraph (1) of this subsection to the nursing facility or ICF/IID in which the individual resides.

[~~(f) Record maintenance. The hospice provider must retain copies of all physician certification statements, a current Minimum Data Set (MDS) assessment or current level of need (LON) assessment, if applicable, and the client-specific comprehensive assessment in the recipient's records at the hospice and the nursing facility clinical record or ICF/MR-RC client record, if applicable.~~]

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

Filed with the Office of the Secretary of State on October 7, 2014.

TRD-201404684
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 438-4466

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (Commission) proposes the following new subchapter to Chapter 809, relating to Child Care Services:

Subchapter G. Texas Rising Star Program, §§809.130 - 809.135

The Commission proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.16 and §809.20

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 809 rule change is to establish rules to administer the Texas Rising Star (TRS) Program pursuant to Texas Government Code §2308.3155.

Texas Government Code §2308.3155 defines the TRS program as "a voluntary, quality-based child care rating system of child care providers participating in the Texas Workforce Commission's subsidized child care program."

Effective September 1, 2013, House Bill 376, 83rd Texas Legislature (Regular Session), amended Chapter 2308 of the Texas Government Code relating to the TRS program. As amended, Chapter 2308 required the Commission to:

--create a TRS program review workgroup to recommend revisions to the TRS program;

--propose rules that incorporate the TRS workgroup's recommended revisions;

--establish graduated reimbursement rates for TRS providers;

--require Local Workforce Development Boards (Boards) to use at least 2 percent of their annual allocations for quality child care initiatives; and

--make funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers.

TRS Program Review Workgroup

As required by Texas Government Code §2308.321, the TRS workgroup was appointed by the Agency's executive director and, as required, included representatives from the following:

--Texas Workforce Commission (one representative)

--Texas Department of Family and Protective Services (DFPS) (one representative)

--Texas Education Agency (one representative)

--Texas Early Learning Council (TELC) (one representative)

--TRS program providers (four representatives)

--Texas School Ready! (TSR!) project participant (one representative)

--Boards (one representative)

--Board staff (three representatives)

The TRS workgroup invited stakeholders from around the state of Texas to participate in workgroup discussions and provide input into proposed TRS program revisions. Stakeholders included individuals from the following entities:

--Boards

--Board child care contractors

--Child care providers

--Children's Learning Institute

--Texas Head Start Collaboration Office

--Texans Care for Children

--Texas Association for the Education of Young Children

--Texas Association for Infant Mental Health

--Texas Licensed Child Care Association

--Texas Partnership for Out of School Time

--Texas Department of State Health Services

Pursuant to Texas Government Code §2308.321, the TRS workgroup was required to take the following into consideration when making recommendations:

--Professional development standards for child care directors and employees, including training and annual professional development requirements;

--Education and experience requirements for assessors and mentors;

--Early learning and school readiness standards;

--Guidelines for infants and toddlers in child care;

--Training hours for providers;

--Playground standards;

--Best practices guidelines based on standards adopted by nationally recognized organizations, including Head Start Program Performance Standards, National Health and Safety Performance Standards, National Association for the Education of Young Children program standards and accreditation criteria, National Association for Family Child Care standards, US Department of Defense standards, national accreditation standards, and TSR! certification standards;

--Research on infant and toddler brain development; and

--Strategies for long-term financing of the TRS program, including financing the payment of:

--incentives to child care providers participating in the TRS program; and

--grants and rewards to child care providers that achieve and maintain high levels of service.

The TRS workgroup also considered the work of TELC, specifically its:

--Texas Quality Rating and Improvement System recommendations;

--Infant, Toddler, and Three-Year-Old Early Learning Guidelines; and

--Texas Core Competencies for Early Practitioners and Administrators.

The TRS workgroup addressed the following topics:

--Minimum licensing requirements for TRS providers;

--Structure and scoring of TRS program standards;

--Minimum requirements for assessing and monitoring providers on the TRS program standards, including TRS providers that move or expand locations;

--Assessments and monitoring for nationally accredited facilities and facilities regulated by the US Military;

--Process for providers to request reconsiderations of their TRS program assessment; and

--Recommendations regarding long-term financing of the TRS program.

Graduated Reimbursement Rates for TRS Program Providers

Texas Government Code §2308.315 requires that the minimum reimbursement rate for a TRS provider must be greater than the maximum rate established for a provider that is not TRS certified for the same category of care, i.e., at least:

--5 percent higher for a provider with a 2-star rating;

--7 percent higher for a provider with a 3-star rating; and

--9 percent higher for a provider with a 4-star rating.

Funding for Quality Child Care Initiatives and TRS Program Assessors and Mentors Texas Government Code, Chapter 2308, further requires that:

--Boards use at least 2 percent of their annual allocations for quality child care initiatives, as set forth in §2308.317(c); and

--the Commission makes funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers, per §2308.3155(c).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§809.2. Definitions

New §809.2(21) adds the definition of the TRS program as a voluntary, quality-based child care rating system for child care providers participating in Commission-subsidized child care, as provided in Texas Government Code §2308.3155.

New §809.2(22) adds the definition of a TRS provider as a provider certified as meeting TRS program standards. The definition specifies that TRS providers are certified as one of the following:

(A) 2-Star Program Provider;

(B) 3-Star Program Provider; or

(C) 4-Star Program Provider.

The two definitions are provided to distinguish between the TRS program and a TRS provider as these terms are used throughout the rule. The levels of certification are consistent with levels of reimbursement specified in Texas Government Code §2308.315.

Certain paragraphs have been renumbered to reflect additions.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission proposes the following amendments to Subchapter B:

§809.16. Quality Improvement Activities

Section 809.16 removes subsections (d) and (e) relating to assessments for providers requesting to participate in the TRS program. These provisions have been modified and moved to new §809.133(b) relating to application and assessments for the TRS program.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b)(1) relating to enhanced reimbursement rates for TRS providers is amended to align the language with the new definition in §809.2(22).

Section 809.20(c) adds the Texas Government Code §2308.315 requirement that TRS providers will receive reimbursements that are higher than the maximum rates for non-TRS providers and that these rates shall be at least:

(A) 5 percent greater for a 2-Star Program Provider or a child care provider meeting the requirements of §809.20(b)(2) or (b)(3);

(B) 7 percent greater for a 3-Star Program Provider; and

(C) 9 percent greater for a 4-Star Program Provider.

Texas Government Code §2308.315 requires that graduated reimbursement rates not go into effect before the Commission adopts revisions to the TRS Program rules. However, following the adoption of the TRS Program rules, time will be required to:

--train TRS assessors and mentors on the new TRS guidelines; and

--conduct assessments of current TRS providers to ensure they meet the requirements necessary to be reimbursed at the levels prescribed in Texas Government Code §2308.315.

The Agency surveyed Boards and a majority indicated that they would be able to conduct all assessments of current TRS providers within five months or less following the adoption of the TRS Program rules. Additionally, based on stakeholder input, the Agency has determined that the training of new TRS assessors can occur concurrently with assessments of current TRS providers, but will require an additional two to three months training time.

Therefore, to ensure that the TRS program can be administered as set forth in Texas Government Code, Chapter 2308, including required technical assistance and incorporation of higher quality-based standards, the new graduated reimbursement rates in §809.20(c) will be implemented effective September 1, 2015.

Further, to expand local flexibility, the Commission adds new §809.20(d) to allow Boards to establish a higher enhanced reimbursement rate for TRS providers than those provided in §809.20(c)(1) - (3), so long as a minimum 2 percent difference between each star level is maintained, consistent with Texas Government Code §2308.315.

Certain subsections have been relettered to reflect additions.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission proposes new Subchapter G, as follows:

§809.130. Short Title and Purpose

New §809.130(a) identifies rules contained in this subchapter as the TRS Program rules.

New §809.130(b) sets forth the purpose of the TRS Program rules. Specifically, the purpose of the TRS Program rules is to in-

terpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS program certification.

New §809.130(c) states that the TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

Pursuant to §2308.3155(b) of the Texas Government Code, new §809.130(d) establishes that the guidelines for rating a child care provider are included in the TRS guidelines.

New §809.130(d) outlines the topics to be covered in the TRS guidelines, requiring the TRS guidelines to:

(1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:

(A) director and staff qualifications and training;

(B) caregiver-child interactions;

(C) curriculum;

(D) nutrition and indoor and outdoor activities; and

(E) parent involvement and education;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

New §809.130(e) requires:

(1) the Commission to adopt the TRS guidelines per the requirements of the Texas Open Meetings Act; and

(2) any amendments to the TRS guidelines made by the Commission, to be subject to the requirements of the Texas Open Meetings Act.

The TRS guidelines take into consideration the recommendations of the TRS workgroup and will be made available for public comment in fall 2014, prior to final adoption by the Commission.

§809.131. Eligibility for the TRS Program

As provided in Texas Government Code §2308.3155, the TRS program is a voluntary, quality-based child care rating system of child care providers participating in the Commission-subsidized child care program. As set forth in new §809.131, to be eligible to participate in the TRS program, a child care provider must agree to accept Commission-subsidized children.

Additionally, TRS providers must demonstrate consistent compliance with minimum state licensing requirements. DFPS is the child care licensing and regulatory agency for the state of Texas. DFPS regulations establish minimum licensing requirements that all child care providers must follow. If a child care provider has repeated licensing deficiencies, DFPS may place the provider on corrective action. DFPS may initiate an adverse action to include a revocation or suspension of a license if:

--deficiencies are not corrected timely;

--there are repeat deficiencies; or

--there is an incident or single deficiency that poses an immediate risk to children.

The TRS program is a voluntary rating system for providers choosing to meet standards above minimum DFPS licensing standards. In order for a provider to meet and maintain TRS program standards, the provider must demonstrate consistent compliance with minimum DFPS licensing standards. Accordingly, as set forth in new §809.131, providers placed on corrective or adverse action by DFPS are automatically found not to have demonstrated consistent compliance with minimum licensing standards and, therefore, are not eligible to participate in the TRS program.

New §809.131(a) incorporates the TRS workgroup's recommendation establishing the eligibility requirements for a child care provider to apply to participate in the TRS Program. A child care provider is eligible to apply for TRS certification if the provider has a current agreement to serve Commission-subsidized children and the provider:

(1) has a permanent (nonexpiring) license or registration from DFPS;

(2) has at least 12 months of licensing history with DFPS; and

(3) is not on corrective or adverse action with DFPS; or

(4) is regulated by and in good standing with the US Military.

New §809.131(b) incorporates the TRS workgroup's recommendation that a child care facility is not eligible to apply for TRS certification if, during the most recent 12-month DFPS licensing history, the provider had:

(1) any critical licensing deficiencies, as listed in the TRS guidelines;

(2) five or more high or medium-high licensing deficiencies, as listed in the TRS guidelines; or

(3) 10 or more total licensing deficiencies of any type.

When reviewing TRS program eligibility, the Commission also takes into consideration the total number of DFPS-cited deficiencies. In determining the maximum number of total DFPS-cited deficiencies allowed for participation in the TRS program, the Commission concurs with the recommendations of the TRS workgroup. The TRS workgroup consulted with DFPS to determine the average number of DFPS licensing deficiencies per provider cited during a 12-month period. In State Fiscal Year 2013 (September 1, 2012 to August 31, 2013), there were an average of 5.81 deficiencies cited per child care center. The average number of deficiencies did not vary significantly based on the size of the center. The smallest centers--a capacity of less than 50 children--had an average of 6.4 deficiencies, while the largest centers--a capacity of over 300 children--had an average of 6.22 deficiencies. Medium-sized centers--a capacity between 50 and 300--had an average of 5.75 deficiencies.

As a result of this analysis, the Commission believes that any provider with 10 or more total licensing deficiencies--well above the state average--has not demonstrated consistent compliance with minimum licensing requirements and should not be eligible to participate in the TRS program.

Additionally, the TRS workgroup worked closely with DFPS to identify:

--what critical licensing deficiencies preclude a provider from participating in the TRS program; and

--the maximum number of high or medium high risk licensing deficiencies preclude a provider from participating in the TRS program.

§809.132. Impact of DFPS Deficiencies

New §809.132 describes the minimum standards necessary for TRS providers to maintain program eligibility and outlines the specific consequences for TRS providers that:

--are placed on corrective or adverse action by DFPS;

--exceed a maximum number of DFPS child care licensing deficiencies of any type; or

--exceed a maximum number of critical, high, or medium-high DFPS child care licensing deficiencies as listed in the TRS guidelines.

In the development of these minimum standards, the Commission consulted closely with the TRS workgroup and accepted its recommendations.

New §809.132(a) mandates that a TRS provider shall lose TRS certification if the provider:

(1) is placed on corrective or adverse action by DFPS; or

(2) has 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

Under new §809.132(b), a TRS provider with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

(1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or

(2) a 2-Star Program Provider will lose certification.

Likewise, as set forth in new §809.132(c), TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

New §809.132(d) provides that TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period.

Additionally, new §809.132(d)(1) - (3) explains that:

(1) TRS providers on a six-month probationary period that are re-cited by DFPS for any of the same deficiencies within the probationary period shall lose a star level with a 2-Star Program Provider losing certification;

(2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination; and

(3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the second six-month probationary period, the provider shall lose TRS certification.

Under new §809.132(e), providers that lose a star level due to licensing deficiencies shall be eligible for reinstatement at the former level if the deficiency is not re-cited by DFPS within the next six months.

New §809.132(f) explains that providers losing TRS certification due to licensing deficiencies will be eligible to reapply for certification no sooner than 12 months following the loss of the certification.

DFPS citations, deficiencies, and actions are effective on the date DFPS makes the final determination following any appeal by the provider to DFPS.

§809.133. Application and Assessments for the TRS Program

New §809.133 sets forth the rules for applying for the TRS Program:

--conducting assessments, including:

--initial assessments for TRS program applicants; and

--recertification assessments for TRS-certified providers; and

--ongoing monitoring of TRS providers.

As recommended by the TRS workgroup, new §809.133(a)(1) requires TRS program applicants to complete an orientation on TRS guidelines, including an overview of the:

(A) TRS program application process;

(B) TRS program measures; and

(C) TRS program assessment process.

New §809.133(a)(2) incorporates the TRS workgroup's recommendations requiring an applicant to complete a TRS program self-assessment tool.

New §809.133(b) states that Boards must ensure that:

(1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;

(2) within 20 days of receipt of the application the provider receives an estimated time frame for scheduling the initial assessment;

(3) an assessment is conducted of any child care provider that meets the eligibility requirements in new §809.131 and requests to participate in the TRS program; and

(4) TRS certification is granted to any provider assessed as meeting the TRS provider certification criteria set forth in the TRS guidelines.

New §809.133(c) incorporates the TRS workgroup's recommendations requiring Boards to ensure that TRS assessments include:

(1) on-site assessment of 100 percent of provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and

(2) recertification of all TRS providers every three years.

New §809.133(d) incorporates the TRS workgroup's recommendations requiring Boards to ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:

(1) at least one unannounced on-site visit; and

(2) a review of the provider's licensing compliance as described in new §809.132.

New §809.133(e) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and facilities regulated by the US Military.

New §809.133(f) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that move or expand locations.

§809.134. Minimum Qualifications for TRS Assessors and Mentors

Section 2308.321(e)(2) of the Texas Government Code requires the TRS workgroup to submit recommendations to the Agency proposing revisions to Agency rules relating to the education and experience requirements for mentors and evaluators.

New §809.134(a)(1) - (3) incorporates the TRS workgroup's recommendations, requiring Boards to ensure TRS assessors and mentors meet the minimum education requirements, as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.

New §809.134(b) incorporates the TRS workgroup's recommendation that a Board may request a waiver from the Commission of the minimum education requirements in subsection (a) if the Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.

The rule language also stipulates that a waiver, if granted by the Commission, is effective for no more than two years. The Commission's expectation is that assessors and mentors obtain the required education during the two-year period.

New §809.134(c) incorporates the TRS workgroup's recommendation requiring Boards to ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

New §809.134(d) incorporates the TRS workgroup's recommendation requiring Boards to ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

New §809.134(e) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.

New §809.134(f) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to meet the background check requirement consistent with 40 TAC, Chapter 745.

New §809.134(g) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to demonstrate:

(1) knowledge of best practices in early childhood education; and

(2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

§809.135. TRS Process for Reconsideration

New §809.135 requires Boards to ensure a process for reconsideration of facility assessment at the Board level. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state or to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses, including child care providers. The TRS program is a voluntary quality certification program and child care providers are not required to participate in the TRS program in order to provide child care services to the general public. Further, child care providers are not required to participate in the TRS program in order to provide Commission-funded child care services. The Agency acknowledges that child care providers that want to participate in the voluntary TRS program may incur additional costs to comply with the TRS standards. Possible additional costs must be considered by the provider relative to the increased reimbursement rates specified in these rules that the provider would receive.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, 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 proposed rules will be to improve the quality of child care services funded by the Commission.

PART IV. COORDINATION ACTIVITIES

As required by Texas Government Code §2308.321, the Commission based these rules on the recommendations of the TRS workgroup. The TRS workgroup was appointed by the Agency's executive director and, as required, included representatives from the following:

--the Agency

--DFPS

--Texas Education Agency

--TELC

--TRS program providers

--TSR! project participant

--Board

--Board staff

The TRS workgroup invited stakeholders from around the state of Texas to participate in workgroup discussions and provide input into proposed TRS program revisions. Stakeholders included individuals from the following entities:

--Boards

--Board child care contractors

--Child care providers

--Children's Learning Institute

--Texas Head Start Collaboration Office

--Texans Care for Children

--Texas Association for the Education of Young Children

--Texas Association for Infant Mental Health

--Texas Licensed Child Care Association

--Texas Partnership for Out of School Time

--Texas Department of State Health Services

The TRS workgroup held 20 meetings from September 2013 to June 2014, including three public meetings to receive public comments and input on the TRS program revisions. Additionally, members of the TRS workgroup participated in weekly conference calls with stakeholders to discuss specific areas of the TRS program.

The TRS workgroup posted meeting materials and draft recommendations at http://www.twc.state.tx.us/svcs/child-care/texas-rising-star-workgroup.html. The TRS workgroup also solicited written comments from the public to trsworkgroup376@twc.state.tx.us.

Additionally, in the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on August 21, 2014. The Commission also conducted a conference call with Board executive directors and Board staff on August 22, 2014, to discuss the concept paper. The Commission also provided the policy concept to the TRS workgroup, stakeholders, and child care providers. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved. The Commission also received comments on the TRS workgroup's recommendations regarding the TRS guidelines. The comments will be reviewed during the Commission's consideration of the proposed TRS guidelines and do not need to be resubmitted.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.2

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rule affects Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as determined by the Board.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.

(4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.

(6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.

(7) Educational program--A program that leads to:

(A) a high school diploma;

(B) a General Educational Development (GED) credential; or

(C) a postsecondary degree from an institution of higher education.

(8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.

(9) Household dependent--An individual living in the household who is one of the following:

(A) An adult considered as a dependent of the parent for income tax purposes;

(B) A child of a teen parent; or

(C) A child or other minor living in the household who is the responsibility of the parent.

(10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.

(11) Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(12) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).

(13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(15) Protective services--Services provided when:

(A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;

(B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(16) Provider--A provider is defined as:

(A) a regulated child care provider as defined in §809.2(17);

(B) a relative child care provider as defined in §809.2(18); or

(C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).

(17) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by DFPS;

(B) registered with DFPS;

(C) licensed by the Texas Department of State Health Services as a youth day camp; or

(D) operated and monitored by the United States military services.

(18) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:

(A) The child's grandparent;

(B) The child's great-grandparent;

(C) The child's aunt;

(D) The child's uncle; or

(E) The child's sibling (if the sibling does not reside in the same household as the eligible child).

(19) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.

(20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(21) Texas Rising Star Program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.

(22) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:

(A) 2-Star Program Provider;

(B) 3-Star Program Provider; or

(C) 4-Star Program Provider.

(23) [~~(21)~~] Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;

(B) job search activities (subject to the requirements in §809.41(d)); or

(C) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

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

Filed with the Office of the Secretary of State on October 7, 2014.

TRD-201404687

Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 475-0829

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SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §809.16, §809.20

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.16. Quality Improvement Activities.

(a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR §98.51. These activities may include, but are not limited to:

(1) activities designed to provide comprehensive consumer education to parents and the public;

(2) activities that increase parental choice; and

(3) activities designed to improve the quality and availability of child care.

(b) Boards must ensure compliance with 45 CFR §98.54(b) regarding construction expenditures, as follows:

(1) State and local agencies and nonsectarian agencies or organizations.

(A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.

(B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.

(2) Sectarian agencies or organizations.

(A) The prohibitions in paragraph (1) of this subsection apply.

(B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR §98.41.

(c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR §98.51.

[~~(d) Boards shall ensure that an assessment is conducted for any provider requesting TRS Provider certification pursuant to Texas Government Code §2308.316. Prior to conducting the assessment, Boards shall ensure that the provider has a current agreement to serve Commission-funded children; and~~]

[~~(1) has the appropriate permanent license or registration from, and is not on corrective or adverse action with, DFPS; or~~]

[~~(2) is regulated by the military.~~]

[~~(e) Boards shall ensure that TRS Provider certification is granted for any provider that is assessed and verified as meeting the TRS Provider certification criteria.~~]

§809.20. Maximum Provider Reimbursement Rates.

(a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:

(1) Provider types:

(A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;

(B) Licensed child care homes as defined by DFPS;

(C) Registered child care homes as defined by DFPS; and

(D) Relative child care providers as defined in §809.2.

(2) Age groups in each provider type:

(A) Infants age 0 to 17 months;

(B) Toddlers age 18 to 35 months;

(C) Preschool age children from 36 to 71 months; and

(D) School age children 72 months and over.

(b) A Board shall establish enhanced reimbursement rates:

(1) for all age groups at [~~child care providers that obtain~~] TRS provider facilities [~~Provider criteria pursuant to Texas Government Code §2308.315~~];

(2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and

(3) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.

(c) The minimum enhanced reimbursement rates established under subsection (b) of this section shall be [~~at least 5%~~] greater than the maximum rate established for providers not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. Effective September 1, 2015, the maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsections (b)(2) or (b)(3) of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS

providers, as long as there is a minimum 2 percent difference between each star level.

(e) [~~(d)~~] A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190 percent [%] of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f) [~~(e)~~] The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) 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.

Filed with the Office of the Secretary of State on October 7, 2014.

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Laurie Biscoe
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Texas Workforce Commission
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 475-0829

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SUBCHAPTER G. TEXAS RISING STAR PROGRAM

40 TAC §§809.130 - 809.135

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The proposed rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the TRS Program rules.

(b) The purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS certification.

(c) The TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

(d) The TRS guidelines for rating a child care provider shall:

(1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:

(A) director and staff qualifications and training;

(B) caregiver-child interactions;

(C) curriculum;

(D) nutrition and indoor and outdoor activities; and

(E) parent involvement and education;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The TRS guidelines:

(1) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(2) may be amended by the Commission, provided that the amendments are adopted subject to the requirements of the Texas Open Meetings Act.

§809.131. Eligibility for the TRS Program.

(a) A child care provider is eligible to apply for the TRS program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from DFPS;

(2) has at least 12 months of licensing history with DFPS; and

(3) is not on corrective or adverse action with DFPS; or

(4) is regulated by and in good standing with the US Military.

(b) A child care facility is not eligible to apply for the TRS program if, during the most recent 12-month DFPS licensing history, the provider had:

(1) any of the critical licensing deficiencies listed in the TRS guidelines;

(2) five or more of the high or medium-high licensing deficiencies listed in the TRS guidelines; or

(3) 10 or more total licensing deficiencies of any type.

§809.132. Impact of DFPS Deficiencies.

(a) A TRS provider shall lose TRS certification if the provider:

(1) is placed on corrective or adverse action by DFPS; or

(2) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

(b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

(1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or

(2) a 2-Star Program Provider shall lose certification.

(c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

(d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period. Further:

(1) TRS providers on a six-month probationary period that are re-cited by DFPS within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;

(2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination of the deficiencies; and

(3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the second six-month probationary period, a provider shall lose TRS certification.

(e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if the deficiency is not re-cited by DFPS within the next six months.

(f) Providers losing TRS certification due to licensing deficiencies shall not be eligible to reapply for certification sooner than 12 months following the loss of the certification.

§809.133. Application and Assessments for the TRS Program.

(a) TRS program applicants must complete:

(1) an orientation on the TRS guidelines, including an overview of the:

(A) TRS program application process;

(B) TRS program measures; and

(C) TRS program assessment process; and

(2) a TRS program self-assessment tool.

(b) Boards shall ensure that:

(1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;

(2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;

(3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 and requests to participate in the TRS program; and

(4) TRS certification is granted for any provider that is assessed and verified as meeting the TRS provider certification criteria set forth in the TRS guidelines.

(c) Boards shall ensure that TRS assessments are conducted as follows:

(1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and

(2) Recertification of all TRS providers every three years.

(d) Boards shall ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:

(1) at least one unannounced on-site visit; and

(2) a review of the provider's licensing compliance as described in new §809.132.

(e) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the US Military.

(f) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that move or expand locations.

§809.134. Minimum Qualifications for TRS Assessors and Mentors.

(a) Boards shall ensure that TRS assessors and mentors meet the minimum education requirements as follows:

(1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;

(2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or

(3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.

(b) The Commission may grant a waiver of no more than two years of the minimum education requirements in subsection (a) if a Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.

(c) Boards shall ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

(d) Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

(e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.

(f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with 40 TAC, Chapter 745.

(g) Boards shall ensure that TRS assessors and mentors demonstrate:

(1) knowledge of best practices in early childhood education; and

(2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

§809.135. TRS Process for Reconsideration.

Boards shall ensure a process for reconsideration of facility assessment at the Board level for the TRS program. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.

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-201404689
Laurie Biscoe
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: November 23, 2014
For further information, please call: (512) 475-0829

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 61. CRIME VICTIMS' COMPENSATION

The Office of the Attorney General (OAG) adopts amendments to Chapter 61, Subchapters A, §§61.1 - 61.4; Subchapter B, §61.101; Subchapter C, §§61.201 - 61.203; Subchapter D, §§61.301 - 61.303; Subchapter E, §§61.401 - 61.414; Subchapter F, §§61.501 - 61.508; Subchapter G, §61.601 and §61.602; Subchapter H, §§61.701 - 61.706; Subchapter I, §§61.801 - 61.804; Subchapter J, §§61.901 and 61.903 - 61.905; and Subchapter K, §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1030, 61.1035, 61.1040, and 61.1045; new §61.304 and §61.305 in Subchapter D; and new §61.416 in Subchapter E, concerning the administration of the OAG's Crime Victims' Compensation Program. The amendments to §61.1 and §61.408 are adopted with changes to correct two non-substantive errors in the proposed text. Otherwise the amendments and new rules are adopted without changes to the proposed text as published in the July 25, 2014, issue of the *Texas Register* (39 TexReg 5675).

The amendments and new sections are being adopted to update the administrative rules to reflect current agency practice. The amendments are being adopted to clarify definitions, make references to internal procedures and processes more consistent or to implement developments in law or agency policy.

Two non-substantive changes were made on adoption. Section 61.1(b), as proposed, used the word "their" instead of "its" and §61.408(b), as proposed, did not include a period at the end of the sentence.

Summary of Comments and Agency Response

A comment pertaining to Subchapter I, §61.802(a)(2) and §61.804(d)(1) was received. The commenter suggested the proposals be clarified as to whether there is a necessity for physical evidence to be collected in order for the OAG to reimburse a law enforcement agency for a sexual assault medical examination. Because the collection of physical evidence is not required for reimbursement to a law enforcement agency for a sexual assault medical examination, no change to the proposed rules is necessary.

SUBCHAPTER A. SCOPE AND CONSTRUCTION OF RULES AND GENERAL PROVISIONS

1 TAC §§61.1 - 61.4

The amendments are adopted in accordance with Texas Code of Criminal Procedure Articles 56.33 and 56.42 which require the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.1. Scope and Construction of Rules.

(a) This chapter is intended to apply solely to the administration of the Crime Victims' Compensation Act (CVCA), Texas Code of Criminal Procedure Chapter 56, Articles 56.06, 56.065, and Subchapter B. The Office of the Attorney General (OAG) adopts this chapter consistent with the CVCA and the authority granted under Texas Code of Criminal Procedure Articles 56.33(a) and 56.42(c).

(b) To assure a just determination for every application submitted to the OAG for compensation by victims of crime, this chapter will be given its most reasonable meaning taken in their total context, and will be construed to secure a just resolution or decision for every controversy.

(c) If good cause is established to show that compliance with this chapter may result in an injustice to any interested person, the chapter may be suspended at the discretion of the OAG.

(d) All ranges of calendar dates shall be inclusive of the listed dates. All applications shall be governed by the statutes in effect on the date of the criminally injurious conduct.

(e) All prior rules promulgated by the OAG in the administration of the CVCA shall continue in effect for the administration of applications arising out of criminally injurious conduct during the effective period of such prior rules.

(f) This chapter shall be liberally construed to promote fairness, due process and the interests of justice.

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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Katherine Cary
General Counsel
Office of the Attorney General
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For further information, please call: (512) 936-1180

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SUBCHAPTER B. DEFINITIONS

1 TAC §61.101

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

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SUBCHAPTER C. APPLICATION

1 TAC §§61.201 - 61.203

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER D. REDUCTION, DENIAL, OR REFUND OF AN APPLICATION OR AWARD

1 TAC §§61.301 - 61.305

The amendments and new sections are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

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SUBCHAPTER E. PECUNIARY LOSS

1 TAC §§61.401 - 61.416

The amendments and new section are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

§61.408. Lump Sum Payments Under Texas Code of Criminal Procedure Article 56.44.

(a) A victim or claimant may receive a lump sum payment for pecuniary loss based on an amount equal to the pecuniary loss accrued to the date of the award for installment payments.

(b) A victim or claimant may receive a lump sum payment for future loss of earnings or loss of support. The victim or claimant must request a lump sum payment for future loss of earnings or support in writing to the OAG and must submit documentation that a lump sum payment will promote the best interest of the victim or claimant. If the OAG determines that there is good cause to make a lump sum payment, the lump sum payments based on future loss of earnings or future loss of support may not exceed a total of $1,000. After a lump sum payment for future earnings or support is paid, all other loss of earnings or loss of support expenses incurred shall be paid in installments as the loss is incurred.

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. MEDICAL CARE, PSYCHIATRIC CARE OR COUNSELING

1 TAC §§61.501 - 61.508

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires

the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER G. RELOCATION AND HOUSING RENTAL EXPENSES BENEFITS

1 TAC §61.601, §61.602

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER H. COMPENSATION TO CERTAIN DISABLED PEACE OFFICERS

1 TAC §§61.701 - 61.706

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER I. REIMBURSEMENT TO LAW ENFORCEMENT AGENCIES FOR FORENSIC SEXUAL ASSAULT MEDICAL EXAMINATIONS

1 TAC §§61.801 - 61.804

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER J. ADMINISTRATIVE REMEDIES

1 TAC §§61.901, 61.903 - 61.905

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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SUBCHAPTER K. ADDRESS CONFIDENTIALITY PROGRAM

1 TAC §§61.1001, 61.1005, 61.1010, 61.1015, 61.1020, 61.1030, 61.1035, 61.1040, 61.1045

The amendments are adopted in accordance with Texas Code of Criminal Procedure, Articles 56.33 and 56.42 which requires the OAG to adopt rules governing the administration of its crime victims' compensation program.

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

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER G. STAR+PLUS

1 TAC §353.608

The Texas Health and Human Services Commission (HHSC) adopts new §353.608, concerning Minimum Payment Amounts to Qualified Nursing Facilities, with changes to the proposed text as published in the August 22, 2014, issue of the *Texas Register* (39 TexReg 6305). The text of the rule will be republished.

Background and Justification

In 2012, HHSC adopted §355.314 of this title (relating to Supplemental Payments to Non-State Government-Owned Nursing Facilities) to create a nursing facility (NF) upper payment limit (UPL) supplemental payment program. Eligible NFs could apply to participate in this program and, if approved, the NFs could receive supplemental payments based on the difference between the amount paid through fee-for service Medicaid and the amount Medicare would have paid for those same services. As with other supplemental payment programs operated by HHSC, the non-federal share of the supplemental Medicaid payment is funded through intergovernmental transfers (IGTs) provided by the non-state governmental entities that own the participating NFs. Payments have been made under the NF UPL program since October 2013.

Beginning March 1, 2015, NF services will be "carved-in" to managed care. In other words, the capitated payment HHSC makes to Medicaid managed care organizations (MCOs) will include funds for NF services provided by NFs contracted with the MCOs. As a result of the carve-in, HHSC is prohibited by federal regulations from continuing the NF UPL program.

In an effort to continue a certain level of funding to the NF UPL participants, HHSC proposed creating a new minimum payment for eligible NFs to be made through the MCOs. Under this proposal, a NF would have to meet multiple criteria to be eligible for this minimum payment. First, the NF would have to be owned by a non-state governmental entity. Second, the NF would be required to make certain representations and certifications on a form to be prescribed by HHSC. Third, the NF would be required provide an IGT to make up the non-federal share of the additional payment beyond the expected MCO payments. Fourth, the NF would be required to submit an application for approval to receive the mandatory minimum payment no later than the date, to be determined by HHSC, by which the capitation payment rate to be paid to the MCOs must be determined. Finally, HHSC proposed that after a certain point in time, only NFs owned by non-state governmental entities in the same or a contiguous county would be eligible to receive the minimum payment.

Under the proposed rule, the minimum payment would have been made on a quarterly basis with MCOs required to pay qualified NFs in two installment payments each quarter. The proposal required the MCO to make the first payment no later than ten calendar days after a qualified NF or its agent submitted a clean claim for a NF day of service. This first payment was proposed to be made at or above the prevailing rate established by HHSC for the date of service. The proposal required the MCO to make the second payment, equal to the difference between the first payment and the minimum payment amount described in the proposal (essentially the Medicare rate for the same service) for all Medicaid days of service provided during the quarter no later than 110 calendar days after the end of the quarter.

HHSC proposed a 110 calendar day delay between the end of the quarter and the second payment to allow qualifying NFs 95 days to submit their claims to qualify for the second payment (NFs have up to 365 days to submit claims to qualify for the first payment) and the MCO 15 days to calculate and process the second payment. Staff considered proposing a 45 calendar day delay which would have allowed NFs 30 days to submit their claims to qualify for the second payment and the MCO 15 days to calculate and process the second payment but wanted to give NFs more time to file claims to qualify for the second payment. Staff requested stakeholder feedback on whether 95 days or 30 days was more appropriate.

Comments

HHSC conducted a public hearing to receive comment on the proposed new rule. HHSC also received written comments on the proposed rule. Oral and written comments were received from the following entities (listed in alphabetical order):

Caring Healthcare

Childress Regional Medical Center

Coryell County Memorial Hospital Authority

Darrell Zurovec

Grady Burris

Leading Age

Michael Oatman

Texas Association of Health Plans (TAHP)

Texas Association of Rural and Community Hospitals (TORCH)

Texas Health Care Association (THCA)

SavaSeniorCare Administrative Services, LLC

Wesleyan Homes, Inc.

Summaries of the comments and HHSC's responses to the comments, grouped by topic, follow:

General Support for Proposal

Comment: Numerous commenters expressed support for the general concept presented in the proposed rule. These commenters indicated that the minimum payment amounts described in the proposed rule would provide much needed funding for rural nursing facilities.

Response: HHSC appreciates the comments. No changes were made in response to these comments.

Definition of Nursing Facility Unit Rate

Comment: One commenter expressed concern that the definition of "Nursing Facility Unit Rate" proposed at subsection (b)(16) described the services provided under the daily rate rather than the rate itself and suggested clarifying language for this definition.

Response: The proposed definition mirrors the definition of "Nursing Facility Unit Rate" used in HHSC's *State-Mandated Requirements for STAR+PLUS Nursing Facility Providers.* No changes were made in response to this comment.

Definition of Resource Utilization Group

Comment: Two commenters expressed concern that the proposed definition of the term Resource Utilization Group (RUG) was incomplete in that it only defined RUGs currently in use by the state Medicaid program and did not define RUGs assigned under the RUG IV system currently in use by the Centers for Medicare & Medicaid Services (CMS) as well as successor classification systems that the state or CMS may adopt from time to time.

Response: HHSC agrees that the proposed definition of the term "RUG" was incomplete. In response to this comment, HHSC has added language to the definition of "RUG" in subsection (b)(22) to indicate that, for purposes of calculations associated with Medicare RUGs, "RUG" is a resource utilization group under Medicare Part A as established by the CMS.

Calculation of the Minimum Payment Amount

Comment: One commenter expressed concern that the proposed rule language describing the calculation of the minimum payment amount was not clear. This commenter suggested various changes to the proposed rule language to clarify how this calculation is to be performed.

Response: HHSC agrees that the proposed language describing the calculation of the minimum payment amount could be clearer. Subsections (c) and (d) have been modified to more clearly describe this calculation, a definition of the term "First Payment" was added at subsection (b)(8) and a definition of the term "Second Payment" was added at subsection (b)(23). The only substantive change made to the calculation was to substitute a standard adjustment for nursing facility add-on services in place of a facility-specific adjustment. The standard adjustment is set at $3.48 per Medicaid day of service for Eligibility Period One which is equal to the weighted average nursing facility add-on amount (weighted by Medicaid days of service) for potential recipients of the minimum payment amount from March 1, 2013, through February 28, 2014. For Eligibility Period Two, the $3.48 is to be increased to account for medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Two. HHSC substituted a standard adjustment for these services for facility-specific adjustments because the data needed to calculate facility-specific adjustments will not be readily available for claims for add-on services provided under managed care.

Comment: One commenter requested that the proposed rule be modified to require HHSC to calculate the second installment payments to qualifying nursing facilities rather than requiring the MCOs to perform these calculations. This commenter indicated that the calculations are complex, that HHSC will have access to all data needed to perform the calculation and that the process could be streamlined if the second installment payments to nursing facilities were calculated by HHSC.

Response: HHSC agrees that the process of determining the second installment payment would be streamlined if the second installment payment amounts were to be calculated by HHSC. Subsection (d) has been modified to indicate that calculation of the second installment payment amounts will be performed by HHSC.

Eligibility

Comment: Multiple commenters expressed concerns that the proposed eligibility requirements for Eligibility Period One were too stringent. Concerns included the proposal that a facility's participation be tied to its prior participation in the UPL program; the inclusion of language referencing a program payment eligibility date (June 20, 2014) that was prior to the publication date of the proposed rule (August 22, 2014); and the fact that the proposed cut-off date to qualify for participation was months before the first day of the eligibility period. These commenters offered a number of suggestions for revisions to the eligibility requirements including: 1) using the Change of Ownership (CHOW) application date rather than the CHOW finalization date in determining a nursing facility's eligibility; 2) modifying the proposed rule language to allow facilities for which the Department of Aging and Disability Services (DADS) has finalized a CHOW application by October 15, 2014, with an effective date no later than March 1, 2015, to participate in Eligibility Period One; 3) allowing nursing facilities with CHOW effective dates of October 1, 2014, or earlier to participate in Eligibility Period One and facilities with CHOW effective dates of March 1, 2015, or earlier to participate in Eligibility Period Two; and 4) that any HHSC-defined cut-off dates only be set after the proposed program becomes effective.

Response: HHSC must have a finalized list of participating providers before the capitation rates for the eligibility period are finalized because the number and nature of participating providers will influence those rates. HHSC has to finalize the capitation rates for Eligibility Period One in early November 2014 and for Eligibility Period Two in early March 2015 in order to comply with CMS regulations pertaining to capitation rates. We have modified the proposed rule language for determining

eligibility to be as accommodating to commenters' requests as possible within the constraints set by CMS regulations. For Eligibility Period One, we have modified the proposed rule language to indicate that a nursing facility will only be eligible if its contract is assigned by DADS to a non-state government entity by October 31, 2014, with an effective date of October 1, 2014, or earlier. For Eligibility Period Two, we have modified the proposed rule language to indicate that a nursing facility will only be eligible if its contract is assigned by DADS to a non-state government entity by February 28, 2015, with an effective date of March 1, 2015, or earlier. References to participation in the prior UPL program have been deleted. The deletion of references to participation in the prior UPL program required the addition of an eligibility requirement in subsection (e) that the non-state governmental entity that owns the nursing facility certify that its facility is a non-state government-owned nursing facility where a non-state governmental entity holds the license and is party to the facility's Medicaid contract and that all funds transferred to HHSC via IGT for use as the state share of payments are public funds.

Comment: One commenter expressed concern about the use of the term "finalized" when discussing CHOW applications in relation to Eligibility Period Two. This commenter indicated that the term "finalized" is undefined and vague in the context of the proposed rule and suggested alternate language.

Response: HHSC has replaced references to the term "finalized" in the discussion of CHOW applications in the rule with references to the term "assigned," as in "a facility may only be eligible if its contract is assigned by DADS to a non-state government entity by..." The use of the term "assigned" is consistent with its use in 40 TAC §19.2308(a) (relating to Change of Ownership).

Comment: One commenter asked that language indicating that Eligibility Period One begins on March 1, 2015, be modified to indicate that Eligibility Period One begins on "the later of March 1, 2015, or the date on which nursing facilities are carved in to managed care."

Response: We have modified references to "March 1, 2015," to state "March 1, 2015, or the date on which nursing facilities are carved in to managed care" throughout the rule.

Comment: One commenter stated that because funding for this program will be obtained from IGTs plus the "federal share", it would not be necessary for the MCOs to be notified of the participating facilities until the day before each calculation period begins. This commenter recommended that HHSC allow providers to enter the program on the beginning of any state fiscal quarter by giving notice of their desire to participate not later than the day prior to the beginning of the applicable quarter.

Response: Capitation rates for an eligibility period cannot be finalized without a finalized list of providers eligible to receive the second payment amount and, in order to comply with CMS regulations surrounding capitation rates, these rates must be finalized in November 2014 for Eligibility Period One and in March 2015 for Eligibility Period Two. No changes were made in response to this comment.

Diversion of Program Funds to Third-Party Entities

Comment: One commenter expressed concern that many nursing facilities are entering into three-party arrangements between the nursing facility, a non-state governmental entity and a consultant where a good bit of the money designed to benefit Medicaid recipients is being siphoned off. This commenter pointed to agreements where close to one-third of the increased funding was being diverted to an entity not affiliated with either the non-state governmental entity or the nursing facility.

Response: HHSC has recently become aware of the existence of the type of three-party arrangements described by the commenter in the nursing facility UPL program. Diversions of UPL funds from the participating provider to a third party such as a consultant, lawyer or accountant is expressly forbidden by the TAC rule governing the UPL program at §355.314(d)(1)(C) of this title (relating to Supplemental Payments to Non-State Government-Owned Nursing Facilities) which states "no part of any supplemental payment paid to the nursing facility under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the supplemental funds." Such diversions violate both the language and spirit of the rule as these funds are intended to be used to improve the quality of care provided to Medicaid nursing facility residents. HHSC expects such diversions to be discontinued immediately; if the practice of diverting funds to pay contingent fees, consulting fees or legal fees is not discontinued, HHSC will move to recoup all payments associated with such diversions.

As well, HHSC has modified the proposed rule at subsections (e)(2) and (e)(3) to add subparagraph (C) to require the non-state governmental entity that owns the nursing facility to certify that no part of any payment made under the program will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of second payment amount funds.

IGT Responsibility

Comment: One commenter expressed concern that the proposed definition of IGT responsibility did not state the time period and methodology that HHSC would use to calculate the "average number of Medicaid residents from the nursing facility" and that the phrase "incorporated into the capitation rate" was confusing. This commenter suggested replacing the proposed language at subsection (b)(9) with language that indicated that the quarterly IGT owed for a nursing facility be equal to the non-federal share of the increase in the MCOs' capitation rates due to the implementation of the Minimum Payment Amounts multiplied by the monthly average number of Medicaid residents from the nursing facility during the Calculation Period multiplied by three.

Response: HHSC agrees that the language in subsection (b)(9) was unclear and has added subsection (g) to the proposed rule to describe the calculation of each nursing facility's IGT responsibility. Details of the calculation have been deleted from subsection (b)(9).

Comment: Three commenters requested that the proposed rule be modified to state when HHSC will require the public entity to IGT. One commenter recommended that language be added to the rule to require the IGT be made after the end of the claims filing deadline. This commenter indicated that many public entities do not have cash reserves to fund the necessary IGT for any length of time and that holding public funds for three to six months would force many of the public participants to reconsider their participation in the program. A second commenter recommended that IGTs be due to HHSC no more than two weeks prior to when the "second payment" is made by the MCO. A third commenter recommended that IGTs be due to HHSC no more than three weeks prior to when the "second payment" is made by the MCO.

Response: HHSC does not believe that it is appropriate to include IGT due dates in the TAC. Such due dates are not included in TAC rules governing other programs funded with IGTs, including the TAC rules governing the nursing facility UPL program at §355.314 of this title. Details regarding IGT due dates will be included in the IGT Responsibility agreement that all participants will be required to enter into to be eligible to participate in the Minimum Payment Amount program. No changes were made in response to these comments.

Comment: One commenter indicated that the proposed rule language did not clearly describe the calculation methodology to be used to determine each public entity's IGT responsibility. This commenter indicated that such a methodology must be more fully explained for the providers to understand the relationship between their IGT funding requirements and their expected "second minimum payment."

Response: HHSC agrees that the language in subsection (b)(9) was unclear and has added subsection (g) to the proposed rule to describe the calculation of each nursing facility's IGT responsibility. Details of the calculation have been deleted from subsection (b)(9).

Comment: One commenter asked what the purpose or reasoning behind the proposed language in subsection (b)(9) relating to the calculation of the IGT responsibility requiring that the average number of Medicaid residents from the nursing facility incorporated into the capitation rate be multiplied by three.

Response: HHSC has deleted this language from the proposed rule.

Comment: One commenter indicated that the proposed rule was not clear as to the ramifications if a qualifying entity transfers less than 100 percent of its IGT Responsibility. In particular, the commenter was concerned that the proposed rule did not address the situation of a non-state governmental entity that has agreements with more than on nursing facility but transfers an amount that is less than 100 percent of the total IGT for all of its facilities.

Response: CMS has indicated that, in a managed care environment, payments for services cannot be contingent upon the receipt of IGTs; as a result MCOs will be required to make the second minimum payment to eligible providers regardless of whether HHSC has received the required IGT from the provider's controlling entity. CMS indicated that it is permissible to require participants to enter into IGT Responsibility agreements with HHSC as a condition of participation in the Minimum Payment Amount program. In response to this guidance from CMS, HHSC has added language to the proposed rule in subsection (e) to indicate that the non-state governmental entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by November 3, 2014, in order to be eligible to receive minimum payment amounts for Eligibility Period One and by February 28, 2015, in order to be eligible to receive minimum payment amounts for Eligibility Period Two. HHSC has also deleted language in subsections (c)(2) and (e)(5) which indicated that if a nursing facility's IGT responsibility was not met for a calculation period, the nursing facility will have forfeited its right to receive the minimum payment amount for that calculation period.

Geographic Proximity Requirements

Comment: Multiple commenters expressed concern about the geographic proximity requirements proposed in subsection (e)(4) of the rule. These commenters indicated that: 1) a non-state governmental entity's decision to acquire a nursing facility should be based on the enabling legislation that governs the entity and the judgment of its board of directors; 2) many rural non-state governmental entities would be prevented from participating in the program if they could only acquire facilities within the same or a contiguous county; 3) in some areas of the state, potential local partners have already been "gobbled up" by distant partners, leaving no potential partners within the same or a contiguous county; and 4) any geographic proximity requirements only be applied to CHOWs with effective dates after either December 1, 2014, or March 1, 2015.

These commenters requested that the geographic restriction be deleted from the rule or expanded to a broader geographic area, such as within the same Regional Healthcare Partnership (RHP) or a contiguous RHP. One commenter requested that HHSC institute a process to grant a waiver from the geographic proximity requirement upon request by the non-state governmental entity. Finally, one commenter requested that, if HHSC decided to impose a geographic restriction, the effective date for the restriction should be at least 60 days after the effective date of the rule so that parties to UPL transactions have an opportunity to react to the restriction.

Response: HHSC agrees that the geographic proximity requirements as proposed were too stringent given the realities of nursing facility and non-state governmental entity locations in rural Texas. However, HHSC believes that reasonable geographic proximity requirements are necessary to meet the goals of the program. Specifically, HHSC expects there to be a true ownership relationship between the non-state governmental entity and the nursing facility for which the non-state governmental entity holds the license and is party to the contract rather than a relationship that exists solely for the purposes of revenue maximization. To quote one consultant who was advocating the creation of this program, the "program would develop a strong set of local providers who work together to provide a safe, efficient and robust continuum of care that results in services being provided in the most appropriate and cost effective place of service." HHSC does not believe that a continuum of care can be developed between a public hospital district and a nursing facility when the nursing facility is on one side of the state and the hospital district on the other. In an effort to address the concerns raised by commenters while still ensuring the non-state governmental entity takes an active interest in the operations of its nursing facility and that goals regarding building a continuum of care are met, we have amended the proposed rule at subsection (e)(4) to indicate that any nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same RHP as the non-state governmental entity taking ownership of the nursing facility. Staff have also amended subsection (b) to add a definition for the term Regional Healthcare Partnership.

Claims Filing Deadline and Timing of Payments

Comment: HHSC had requested stakeholder feedback on the claims filing deadline proposed in subsection (f) for claims to qualify for inclusion in minimum payment amount calculations. One stakeholder requested that the claims filing deadline remain at 95 days. A second stakeholder requested that the claims filing deadline be reduced to 60 days to speed up the flow of minimum payment amount funding to qualified facilities.

Response: Historical experience indicates that most nursing facilities file claims well before 95 days after the provision of the service in order to improve their cash flow situation. HHSC

believes that the positive impact of gaining the ability to more quickly determine and process minimum payment amounts under a reduced claims filing deadline outweighs the negative impact of those few claims filed after the 60-day deadline not being included in the calculation. As a result, we have amended the proposed rule language at subsection (f) to indicate that a qualified nursing facility must file a clean claim for a Nursing Facility Unit Rate no later than 60 calendar days after the end of the calculation period within which the service was provided for the claim to be included in the calculation of the minimum payment amount.

Comment: One commenter requested that proposed subsection (c)(1)(A) which stated "The MCO must make the second payment no later than 110 calendar days after the end of Calculation Period." be modified to reduce the number of days between the end of the Calculation Period and the date the second payment is required to be made. This commenter indicated that claims that have not been processed within that timeframe should be captured through a final reconciliation conducted 90 to 120 days after the end of each eligibility period.

Response: HHSC does not possess the resources to incorporate a final claims reconciliation into its calculation of minimum payment amounts. It has revised the proposed rule language to reduce the claims filing deadline for claims to be incorporated into the minimum payment amount calculation from 95 days to 60 which will allow payments to be made quicker than they otherwise would have. As well, HHSC has revised the definition of the Calculation Period in subsection (b)(1) to indicate that minimum payment amounts will be calculated on a monthly rather than a quarterly basis to address some cash flow issues. Finally, HHSC revised language at subsection (c)(1)(A) to state "The MCO must make the second payment no later than 10 calendar days after being notified of the Second Payment Amount by HHSC". Under the proposed rule as revised, HHSC will have to wait 120 days after the end of a Calculation period (60 days for the claims filing deadline to pass and another 60 days for the MCOs' encounters submission deadline to pass) before it can access the data necessary to calculate minimum payment amounts. The actual calculation should be accomplished in five to ten working days. Once the calculations are complete, second payment amounts will be shared with the MCOs, who will have ten calendar days to make payments to their qualified nursing facilities.

Other Comments

Comment: One commenter requested that the program be open to privately owned facilities.

Response: The non-federal share of the Minimum Payment Amount program is funded through IGTs of public funds which are defined as funds derived from taxes, assessments, levies, investments and other public revenues within the sole and unrestricted control of a governmental entity. Privately owned facilities will not have access to public funds and so cannot be included in the Minimum Payment Amount program. No changes were made in response to this comment.

Comment: One commenter requested that non-state government facilities be carved out of managed care so that the UPL program could continue in its current form for these facilities.

Response: Senate Bill 7, 83rd Legislature, Regular Session requires HHSC to expand Medicaid managed care to include nursing facilities and does not make an exception for non-state government-owned nursing facilities. No changes were made in response to this comment.

Comment: Two commenters expressed concern that Medicaid-pending nursing facility residents would not be incorporated in the minimum payment amount calculations since they can take up to 180 days to be determined Medicaid-eligible and so would not be able to meet the proposed claims filing deadline.

Response: Medicaid-pending nursing facility residents will be reimbursed under fee-for-service, not managed care. CMS has indicated that it will require the nursing facility UPL program to be deleted upon carve in. Claims for Medicaid-pending nursing facility residents will not be eligible for inclusion in the Minimum Payment Amount program. No changes were made in response to this comment.

Comment: One commenter requested that the proposed rule be modified with the goal of creating the same structure of minimal risk that was available under the UPL program to make sure the Governing Bodies of the public Nursing Facilities can show the fiduciary responsibilities over the funds they are tasked with managing have been met. This commenter requested a workgroup meeting to review the final language in the contemplated adopted rule prior to adoption to make sure everything possible has been done to minimize the financial risk to all parties involved in this program. This commenter also requested that they be given the opportunity to review and provide comments on any documents required for participation in the program such as program agreements or commitments.

Response: Due to CMS restrictions and requirements, it is not possible to create the same structure of minimal risk that was available under the UPL program. Non-state government-owned nursing facilities are not required to participate in the Minimum Payment Amount program and, if their Governing Bodies do not believe they can meet their fiduciary responsibilities while participating in the program, they have the freedom to choose not to participate. HHSC has carefully reviewed all comments provided during the 30-day comment period and made changes in response to those comments when appropriate. Allowing further review of the final rule language by a workgroup would delay the adoption of the final rule and allow members of the workgroup more input into the final language of the rule than other members of public. The IGT Responsibility agreement will be drafted by HHSC with the intent of protecting the state if a non-state governmental entity fails to meet its IGT responsibilities under the Minimum Payment Amount program; as such it would not be appropriate to share draft versions of this document with stakeholders for comment. Participation in the Minimum Payment Amount program is voluntary and, if a nursing facility's Governing Body does not believe it should sign the IGT Responsibility agreement, it can withdraw its request to participate in the program. No changes were made in response to this comment.

Comment: HHSC had requested stakeholder comments on whether facilities participating in the program should be excluded from the Direct Care Staff Rate enhancement program. This commenter indicated that facilities should only be excluded from the Direct Care Staff Rate enhancement program if they were guaranteed re-entry into the enhancement program at their prior level of participation in the event that the Minimum Payment Amount program is terminated.

Response: HHSC cannot guarantee re-entry into the enhancement program in the event that the Minimum Payment Amount program is terminated. No changes were made in response to this comment.

Comment: One commenter asked if there were federal regulations preventing HHSC from simply processing UPL payments outside of the capitated rate (i.e., an add-on to current reimbursement levels).

Response: Federal regulations prohibit supplemental payments outside of the capitated rate. No changes were made in response to this comment.

In addition to any changes made in response to comments, HHSC has made the following changes:

The title of the section was changed to Minimum Payment Amounts to Qualified Nursing Facilities to better describe the content of the section.

References throughout the rule to the STAR+PLUS Program have been broadened to include any Medicaid managed care program offering nursing facility services. These changes were made to ensure that recipients receiving nursing facility services under the Texas Dual Eligible Integrated Care Project can be included in the Minimum Payment Amount program.

An overarching definition of the term Eligibility Period was added at subsection (b)(5). The original proposal only contained specific definitions for Eligibility Period One and Eligibility Period Two.

The definition of "Non-state Government-owned Nursing Facility" at subsection (b)(16) was modified to add the term "network." This modification was made to increase the accuracy of the definition.

The definition of "Qualified Nursing Facility" at subsection (b)(19) was modified to delete language referring to the claims filing deadline and to indicate that a qualified nursing facility must be a Non-state Government-Owned nursing facility. This modification was made because references to the claims filing deadline in subsection (b)(19) were redundant to references in subsection (f) and to clarify the definition.

Subsection (h) was modified to indicate that if a Qualified Nursing Facility changes ownership to another non-state government entity, the data used for the calculations described in subsection (d) will include data from the facility for the entire Calculation Period, including data relating to payments for days of service provided under the prior owner. The modification was the addition of the term "to another non-state government entity." This modification was made because only non-state government-owned nursing facilities are eligible to participate in the Minimum Payment Amount program; the original proposed language was ambiguous and could have been read to indicate that payment calculations would take into account claims for services provided by privately owned nursing facilities.

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; 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 establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

§353.608. Minimum Payment Amounts to Qualified Nursing Facilities.

(a) Introduction. This section establishes minimum payment amounts for certain non-state government-owned nursing facility providers participating in the STAR+PLUS Program, or other Medicaid managed care programs offering nursing facility services, and the conditions for receipt of these amounts.

(b) Definitions.

(1) Calculation Period--A month used to calculate the Minimum Payment Amount. There are six calculation periods in Eligibility Period One and twelve calculation periods in Eligibility Period Two.

(2) CHOW Application--An application filed with the Department of Aging and Disability Services for a nursing facility change of ownership.

(3) Clean Claim--A claim submitted by a provider for health care services rendered to an enrollee with the data necessary for the managed care organization to adjudicate and accurately report the claim. Claims for Nursing Facility Unit Rate services that meet the Department of Aging and Disability Services' criteria for clean claims submission are considered Clean Claims. Additional information regarding Department of Aging and Disability Services' criteria for clean claims submission is included in HHSC's Uniform Managed Care Manual, which is available on HHSC's website.

(4) DADS--The Texas Department of Aging and Disability Services.

(5) Eligibility Period--A period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section.

(6) Eligibility Period One--The first period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2015.

(7) Eligibility Period Two--The second period of time for which a Qualified Nursing Facility may receive the Minimum Payment Amounts described in this section, covering dates of service from September 1, 2015, to August 31, 2016.

(8) First Payment--The payment made in the ordinary course of business by MCOs to Qualified Nursing Facilities for the provision of covered services to Medicaid recipients.

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

(10) Intergovernmental transfer (IGT)--A transfer of public funds from a non-state governmental entity to HHSC.

(11) IGT Responsibility--The IGT owed by a non-state governmental entity, as determined by HHSC, for funding the non-federal share of the increase in the payments to the MCOs due to the Minimum Payment Amount program.

(12) MCO--A Medicaid managed care organization contracted with HHSC to provide nursing facility services to Medicaid recipients.

(13) Minimum Payment Amount--The minimum payment amount for a Qualified Nursing Facility, as calculated under subsection (d) of this section.

(14) Network Nursing Facility--A nursing facility that has a contract with an MCO for the delivery of Medicaid covered benefits to the MCO's enrollees.

(15) Non-state Governmental Entity--A hospital authority, hospital district, health district, city or county.

(16) Non-state Government-owned Nursing Facility--A network nursing facility where a non-state governmental entity holds the license and is a party to the nursing facility's Medicaid provider enrollment agreement with the state.

(17) Nursing Facility Add-on Services--The types of services that are provided in the nursing facility setting by a provider, but are not included in the Nursing Facility Unit Rate, including but not limited to emergency dental services, physician-ordered rehabilitative services, customized power wheel chairs, and augmentative communication devices.

(18) Nursing Facility Unit Rate--The types of services included in the DADS daily rate for nursing facility providers, such as room and board, medical supplies and equipment, personal needs items, social services, and over-the-counter drugs. The Nursing Facility Unit Rate also includes applicable nursing facility rate enhancements as described in §355.308 of this title (relating to Direct Care Staff Rate Component), and professional and general liability insurance. Nursing Facility Unit Rates exclude Nursing Facility Add-on Services.

(19) Qualified Nursing Facility--A Non-state Government-Owned Network Nursing Facility that meets the eligibility requirements described in subsection (e) of this section.

(20) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a non-state governmental entity that holds the license and is party to the Medicaid provider enrollment agreement with the state. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(21) Regional Healthcare Partnership (RHP)--A collaboration of interested participants that work collectively to develop and submit to the state a regional plan for health care delivery system reform as defined and established under Chapter 354, Subchapter D of this title (relating to Texas Healthcare Transformation and Quality Improvement Program).

(22) RUG--For the purpose of calculations described in subsection (d)(1) of this section, a resource utilization group under Medicare Part A as established by the Centers for Medicare & Medicaid Services (CMS). For the purpose of calculations described in subsection (d)(2) of this section, a resource utilization group under the RUG-III 34 group classification system, Version 5.20, index maximizing, as established by the state and CMS.

(23) Second Payment--The amount a Qualified Nursing Facility can receive that is equal to the Minimum Payment Amount less adjustments to that amount, as described in subsection (d) of this section.

(c) Payment of Minimum Payment Amount to Qualified Nursing Facilities.

(1) An MCO must pay a Qualified Nursing Facility at or above the Minimum Payment Amount in two installment payments for a Calculation Period, using the calculation methodology described in subsection (d) of this section.

(A) The MCO must make the First Payment no later than ten calendar days after a Qualified Nursing Facility or its agent submits a Clean Claim for a Nursing Facility Unit Rate to the HHSC-designated portal or the MCO's portal, whichever occurs first. The MCO will make the First Payment for the Nursing Facility Unit Rate at or above the prevailing rate established by HHSC for the date of service. HHSC's website includes information concerning HHSC's prevailing rates. The MCO must make the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC. The Second Payment will be the difference between the Minimum Payment Amount and the adjustment to the Minimum Payment Amount, as calculated by HHSC and described in subsection (d) of this section.

(B) For purposes of illustration only, if a Qualified Nursing Facility provider files a Clean Claim for a Nursing Facility Unit Rate on March 6, 2015, the MCO must make the First Payment no later than March 16, 2015, and the Second Payment no later than 10 calendar days after being notified of the Second Payment amount by HHSC.

(2) HHSC will provide each MCO with a list of its Qualified Nursing Facilities for each Calculation Period as well as the Second Payment amount, as calculated by HHSC and described in subsection (d) of this section, associated with the MCO's members for each of its Qualified Nursing Facilities.

(d) Calculation of the Second Payment. HHSC will calculate the Second Payment for each Qualified Nursing Facility using the methodology detailed in this subsection. If a Qualified Nursing Facility is contracted with more than one MCO, HHSC will calculate a separate Second Payment for each MCO with which the Qualified Nursing Facility is contracted.

(1) Calculate the Minimum Payment Amount. The Minimum Payment Amount is made up of multiple subsidiary amounts. There is a subsidiary amount for each RUG.

(A) To determine the subsidiary amount for a particular RUG, use the formula: Subsidiary Amount = Days of Service x Medicare Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "Medicare Rate" is the Medicare skilled nursing facility payment rate for the RUG in effect on the date of service.

(B) The Minimum Payment Amount is equal to the sum of all subsidiary amounts calculated in accordance with subparagraph (A) of this paragraph.

(2) Calculate the Adjustment to the Minimum Payment Amount. The adjustment to the Minimum Payment Amount is equal to the sum of all adjustments for each RUG. The adjustment to the Minimum Payment Amount is determined as follows:

(A) First, determine the amount of the First Payment to the nursing facility using the formula: First Payment = Days of Service x MCO Rate, where:

(i) "Days of Service" is the total Medicaid days of service for a particular RUG for clean claims for services that were provided during the Calculation Period; and

(ii) "MCO Rate" is the rate paid by the MCO for the particular RUG.

(B) Second, sum the result in subparagraph (A) of this paragraph for each RUG.

(C) Third, add or subtract, as necessary, the amount of payment adjustments to Nursing Facility Unit Rate claims for services that were provided during the Calculation Period from the result in subparagraph (B) of this paragraph.

(D) Fourth, determine the amount related to the Nursing Facility Add-on Services using the formula: Nursing Facility Add-on Amount = Days of Service x Per Diem, where:

(i) "Days of Service" equals the number used in clause (2)(A)(i) of this subparagraph; and

(ii) "Per Diem" is an estimate, as determined by HHSC, of the weighted average per diem payment amount for Nursing Facility Add-on Services provided to Medicaid recipients in Qualified Nursing Facilities.

(I) For Eligibility Period One, the per diem will equal $3.48.

(II) For Eligibility Period Two, the per diem will equal $3.48 plus medical inflation between the mid-point of Eligibility Period One and the mid-point of Eligibility Period Two, as determined by HHSC.

(E) Fifth, sum the result in subparagraph (D) of this paragraph for each RUG.

(F) Sixth, determine the adjustment to the Minimum Payment Amount by subtracting the result from subparagraph (E) of this paragraph from the result from subparagraph (C) of this paragraph.

(3) Calculate the Second Payment. To determine the Second Payment, subtract the adjustment to the Minimum Payment Amount described in paragraph (2)(F) of this subsection from the Minimum Payment Amount described in paragraph (1) of this subsection.

(e) Eligibility for Receipt of Minimum Payment Amounts.

(1) A nursing facility is eligible to receive the Minimum Payment Amounts described in this section if it complies with the requirements described in this subpart for each Eligibility Period.

(2) Eligibility Period One. A nursing facility is eligible to receive Minimum Payment Amounts for Eligibility Period One if it meets the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of October 1, 2014, or earlier. HHSC will finalize its list of eligible facilities on November 1, 2014. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by October 31, 2014, with an effective date of October 1, 2014, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by November 3, 2014. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by November 3, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(3) Eligibility Period Two. A nursing facility is eligible to receive the Minimum Payment Amounts for Eligibility Period Two if it has met the following requirements:

(A) The nursing facility must be a Non-state Government-owned Nursing Facility with a Medicaid contract effective date of March 1, 2015, or earlier. HHSC will finalize its list of eligible facilities on March 1, 2015. A facility may only be eligible if its contract is assigned by DADS to a non-state government entity by February 28, 2015, with an effective date of March 1, 2015, or earlier.

(B) The Non-state Governmental Entity that owns the nursing facility must have entered into an IGT Responsibility agreement with HHSC by February 28, 2015. The IGT Responsibility agreement will cover the estimated IGT Responsibility for the nursing facility for the Eligibility Period.

(C) The Non-state Governmental Entity that owns the nursing facility must certify the following facts on a form prescribed by HHSC and the form must be received by HHSC by February 28, 2014.

(i) That it is a Non-state Government-owned Nursing Facility where a Non-state Governmental Entity holds the license and is party to the facility's Medicaid contract.

(ii) That all funds transferred to HHSC via IGT for use as the state share of payments are Public Funds.

(iii) That no part of any payment made under the Minimum Payment Amount program under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the nursing facility's receipt of the Minimum Payment Amount funds.

(4) Geographic Proximity to Nursing Facility. Any nursing facility with a CHOW Application approved by DADS with an effective date on or after October 1, 2014, must be located in the same Regional Healthcare Partnership (RHP) as the Non-state Governmental Entity taking ownership of the nursing facility.

(f) Claims Filing Deadline. A Qualified Nursing Facility must file a Clean Claim for a Nursing Facility Unit Rate no later than 60 calendar days after the end of the Calculation Period within which the service is provided for the claim to qualify for the Minimum Payment Amount described in this section. The MCO must pay a Clean Claim that is filed after this deadline but within 365 calendar days of the date of service, at the standard rate established in the network provider agreement for Nursing Facility Unit Services; however, claims filed after the 60 deadline will not be incorporated in the calculation of the Minimum Payment Amount.

(g) IGT Responsibility.

(1) Timing. HHSC will determine IGT responsibilities prior to the first day of the Eligibility Period.

(2) Aggregate IGT Responsibility. The aggregate IGT responsibility for all Qualified Nursing Facilities for an Eligibility Period will be equal to the non-federal share of the increase in the MCOs' capitation rates due to the Minimum Payment Amount program multiplied by the estimated number of member months for which the MCOs will receive the capitation rate during the eligibility period multiplied by 1.1.

(3) Allocation of Aggregate IGT Responsibility to Individual Nursing Facilities. HHSC will allocate the aggregate IGT responsibility to each qualified nursing facility based on the percentage of the total increase in the MCOs' capitation rates due to the Minimum Payment Amount program associated with the nursing facility in the base period data used to develop the capitation rates.

(4) Reconciliation. HHSC will conduct a single reconciliation of IGT responsibilities for each eligibility period and will base the reconciliation on a snapshot of actual member months for the eligibility period taken on the last day of the eligibility period. The percentage of the total increase in the MCOs' capitation rates due to the Minimum Payment Amount program associated with each nursing facility will not be subject to reconciliation.

(5) All IGT calculations are solely at the discretion of HHSC and are not open to desk review or appeal.

(h) Changes of Ownership. If a Qualified Nursing Facility changes ownership to another non-state government entity during either of the eligibility periods described in subsection (e) of this section, then the data used for the calculations described in subsection (d) of this section will include data from the facility for the entire Calculation Period, including data relating to payments for days of service provided under the prior owner.

(i) Dates the Minimum Payment Amount is available. The minimum payment requirements described in this section will only cover dates of service from the later of March 1, 2015, or the date on which nursing facility services become managed care services, to August 31, 2016.

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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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 21. CITRUS

SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.6

The Texas Department of Agriculture (the department) adopts amendments to Chapter 21, Subchapter A, §21.6, concerning restrictions for movement of citrus quarantined articles, with changes to the proposal published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6770). The amendments are adopted to provide a regulatory framework for the movement of citrus quarantined articles produced in a certified nursery located outside of the Citrus Zone to a location inside of the Citrus Zone, by requiring those plant nurseries to meet the same previously-established plant propagation standards required of nurseries inside the Citrus Zone. These amendments are adopted to complement restrictions found in 4 TAC §§19.615 - 19.622, related to the quarantine of citrus greening disease, and in Chapter 21, related to the citrus nursery stock certification program, and to citrus quarantines, quality and certification, in combatting the spread of citrus greening and other quarantined diseases of citrus and related plants. The amendments allow for the movement of citrus quarantined articles into the Citrus Zone, in a manner that effectively slows the spread of citrus greening and other quarantined pests and diseases. Amendments to §21.6 provide under what conditions quarantined articles from areas of Texas outside the of the citrus zone may be transported into the citrus zone, and specific requirements for shipment of quarantined articles from areas of Texas outside of the Citrus Zone into the Citrus Zone. Section 21.6(a)(2)(B)(i) has been changed from the proposal to clarify that quarantined articles must meet the requirements of Texas Agriculture Code, Chapter 19 and 4 TAC Chapter 21 as well as being produced in a certified nursery.

Comments were received on the proposal from the Texas Nursery and Landscape Association (TNLA), Texas Citrus Mutual (TCM), and from two members of the citrus nursery industry that operate nurseries certified by the department. Comments from TNLA were in general support of the proposal. One of the citrus nursery operators commented that they believe this rule seeks to level the playing field inside and outside the Citrus Zone. Comments also expressed that this rule would both benefit and protect consumers and producers. One commenter stated his belief that not only should trees be drenched for all quarantined areas, but should be drenched no matter the final destination, whether going in or out of the citrus zone. The department believes that requiring a drench treatment for citrus nursery stock that is either not located in a quarantined area outside of the citrus zone or that will not be shipped into the citrus zone or into a quarantined area is not necessary at this time to slow the spread of citrus greening. However, drenching trees regardless of the destination may be a good voluntary best management practice that the citrus nursery industry could implement separate from rulemaking.

Comments received from Texas Citrus Mutual (TCM) urged the department to extend the comment period from 30-60 days to allow for more time for stakeholders to comment on the impact of the rule. TCM comments specifically addressed concerns that this proposed rule does not go far enough to 1) ensure that only certified budwood obtained from an approved budwood source be allowed to be distributed from a facility; and 2) ensure proper testing procedure and methods for citrus greening and various other viroids before the movement of citrus from outside of the citrus zone into the citrus zone. Also, TCM commented that because the department's rules for certified nurseries were just issued last year, not allowing for time for nurseries to adjust to the requirements.

Comments received from Paramount Citrus echoed the concerns of Texas Citrus Mutual. However, Paramount also commented that certified budwood movement should not only be free of diseases but also be true to type and that citrus stock moved into the citrus zone must be from certified budwood, budwood certified by the Texas Citrus Center. Paramount Citrus also expressed concern that the resource constraints TDA is currently facing may not provide for adequate inspections of the additional facilities to ensure the safety of the citrus products. Overall, the comments received from the commercial citrus industry were not in complete opposition of the proposed rule, but simply served to caution TDA to take more time to contemplate the potential impacts the proposed regulation will have on the spread of disease, particularly to the commercial citrus industry.

TDA has evaluated these comments and is very sensitive to the concerns expressed by the commercial citrus industry. The amendments to §21.6, as adopted, allow for immediate action in regards to movement of quarantined articles from nurseries in Texas outside the citrus zone to nurseries in the citrus zone and clarify that such articles must meet all requirements of existing law and rules, including that nursery stock must be propagated using certified citrus budwood. The department intends to work with the citrus industry and the Texas Citrus Budwood Advisory Council to develop changes for future rulemaking to address more specific concerns such as the allowing of private nurseries to have an Increase Block, and questions nurseries have about testing and propagation requirements.

The amendments are adopted under the Texas Agriculture Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to prevent the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area and rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §71.0091, which provides the department with the authority to adopt rules as necessary for the seizure, treatment, and destruction of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71.

§21.6. Restrictions.

(a) General.

(1) In addition to any other applicable restrictions imposed by regulations adopted under Chapter 71, Texas Agriculture Code, quarantined articles may not be transported into Texas except as outlined in subsections (b) and (c) of this section. Legible and complete records sufficient to document compliance with all requirements in this section shall be kept, maintained, accessible, and made available for inspection during normal business hours for a time period no less than two years, including any specific recordkeeping requirements specified below.

(2) Quarantined articles from areas of Texas outside of the citrus zone may not be transported into the citrus zone except:

(A) if approved by the department under the conditions of a compliance agreement for research, for testing of official regulatory samples, or for use in the production of parasites, predators or pathogens of a quarantined pest or other purpose deemed necessary by the department; or

(B) if the quarantined articles:

(i) are produced in a nursery that is certified by the department in accordance with Subchapter D of this chapter, and otherwise meet the requirements of Texas Agriculture Code, Chapter 19, and 4 TAC Chapter 21, which provide that nursery stock moved into the citrus zone must be propagated using certified citrus budwood;

(ii) are maintained free of Asian citrus psyllids and other quarantined pests and diseases; and

(iii) are transported from a Certified Citrus Nursery directly into the Citrus Zone, according to requirements in paragraphs (3) and (4) of this subsection; and

(iv) are treated as prescribed in the USDA Treatment Manual (USDA Treatment Manual, D301;76(b), Table 5-8-1); specifically, quarantined articles are treated with an USDA-approved soil drench or in-ground granular systemic insecticide (an appropriately labeled formulation of dinotefuran or imidacloprid), followed by a foliar spray (an appropriately labeled formulation of *bifenthrin, chlorpyrifos, deltamethrin, fenpropathrin,* or *imidacloprid/cyfluthrin)* prior to shipment. The mandatory soil drench or in-ground granular systemic insecticide treatment shall be applied to each regulated article either 20-40 days prior to movement of the article; or up to date of movement only if the article was previously treated 20-90 days prior to movement. The mandatory foliar spray shall be applied no more than 10 days prior to movement. All treatments must be applied according to the EPA label, including, but not limited to, application directions, restricted entry interval (REI), preharvest interval (PHI) and Worker Protection Standards (WPS). Records of the lot numbers of treated plants, the pesticides applied (including at a minimum; application dates, EPA registration number of product used, method of treatment, name of applicator) for each mandatory treatment shall be maintained by the nursery for two years following the last treatment date for a given lot of regulated articles; and

(v) have attached to each article, or to the container in which the article is planted, a waterproof tag or label upon which is legibly printed in permanent lettering the application date of the soil drench or in ground granular systemic insecticide mandated in this section as "TX MM/DD/YYYY".

(3) Requirements for shipment from a certified citrus nursery outside of the Citrus Zone to a certified citrus nursery located inside the Citrus Zone:

(A) if shipped by U.S. Mail or a package delivery service: shipment shall be sealed using insect exclusionary containers; the containers shall not leave the originating certified citrus nursery until sealed; or

(B) if shipped by enclosed truck, other enclosed vehicle or enclosed trailer: shipment must be loaded at the originating certified citrus nursery in a manner that prevents introduction of psyllids or other pests. The shipping compartment shall be kept closed at all times, except when regulated articles are entering or exiting the compartment. After having been loaded into the vehicle, the shipment must be moved immediately and directly to the destination, without other stops except as necessitated by traffic, fuel or an emergency.

(4) Requirements for shipment from a certified citrus nursery outside the Citrus Zone to a location inside the Citrus Zone that is not a certified citrus nursery:

(A) if shipped by US Mail or a package delivery service. Shipment shall be in sealed insect exclusionary containers; the containers shall not leave the originating certified citrus nursery until sealed; or

(B) if shipped by truck, other vehicle or trailer:

(i) shipment shall be in a transport vehicle that is completely psyllid-proof (enclosed or with the plants completely covered with a tarp or other psyllid-proofing material); or

(ii) all regulated plants being transported must have been treated with a kaolin-based particle film, such as Surround™ and the coating has not been compromised by movement, weather, etc. Treatment must be made no more than 7 days prior to date of shipping. Shipment must be moved immediately and directly from the certified citrus nursery to the destination without stops, except as necessitated by such necessary considerations such as traffic, fuel, or an emergency.

(5) Any facility that moves quarantined articles into the Citrus Zone under paragraph (2) of this subsection shall provide ready access to the certified citrus nursery facility and all relevant records during normal business hours to authorized representative of TDA.

(b) Exemptions.

(1) Citrus seed produced in California is exempt from these rules.

(2) Commercial citrus fruit is exempt from these rules.

(c) Exceptions. Budwood of citrus varieties not existing in Texas may be shipped into Texas, including into the citrus zone, from any state or from outside the United States under the following conditions:

(1) before any citrus budwood is allowed to enter Texas, it shall be certified as originating from an area free of citrus blight. It shall also have been tested using methods approved by the department, and such tests shall have produced negative results for all diseases quarantined under §21.2 of this chapter (relating to Quarantined Pests and Diseases). Documentation of negative results of tests described in this section shall be included with the shipment; and

(2) budwood shall be assigned to a federal or state agency approved by the department for the purpose of confirmation tests to determine if the budwood is free from all virus and infectious diseases currently known at the time of the confirmation tests before it is released to the buyer. For confirmation tests, budwood shall be grown on rootstock varieties appropriate for the diagnosis of the diseases listed in this section; and

(3) for all budwood shipments, a permit from the Texas Department of Agriculture shall be issued and, together with a copy of the certificate(s) required by paragraphs (4) and (5) of this subsection, shall be attached to the shipment; and

(4) before any citrus budwood will be allowed to enter Texas from outside the continental United States, it shall be cleared through the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Such clearance shall be certified to and approved by the department before the entrance of the budwood shipment into Texas; or

(5) in addition to the requirements outlined in paragraphs (1), (2), and (3) of this subsection, shipments originating in a state other than Texas shall be accompanied by a certificate from the origin state's department of agriculture specifying that the budwood is free of pests and diseases listed in this subchapter. A copy of the certificate shall be sent to and approved by the Texas Department of Agriculture before shipment of the budwood to Texas. However, budwood originating from the California citrus clonal protection program (CCCPP) or the USDA-ARS National Clonal Germplasm Repository for Citrus and Dates (USDA-ARS-NCGR) will be exempt from the requirements in paragraphs (1) and (2) of this subsection, but must be accompanied by a certificate from the CCCPP or the USDA-ARS-NCGR specifying that the budwood is free of pests and diseases listed in this subchapter instead of the origin state's certificate.

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

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

TRD-201404745
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 1, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 463-4075

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 80, §§80.3, 80.32, 80.36, 80.40, 80.41. 80.90, and 80.93, relating to the regulation of the manufactured housing program, without changes to the proposed text as published in the August 29, 2014, issue of the *Texas Register* (39 TexReg 6772). The rules will not be republished.

The rules are adopted to comply with House Bill 944 and House Bill 3361 (83rd Legislature, 2013 Regular Session) that amended the Manufactured Housing Standards Act and for clarification purposes.

The proposed rules as published on August 29, 2014 are adopted as final rules and are effective thirty (30) days following the date of publication of the notice of adoption in the *Texas Register.*

There were no requests for a public hearing to take comments on the rules.

One person made general comments that cannot be addressed through the rulemaking process because they relate to statutory issues.

The following is a restatement of the rules' factual basis:

Section 80.3(a): The retailer's branch location license and rebuilders license fees are removed and a fee for reprinted licenses is added to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.3(c): Made a correction to the name of the Application for Statement of Ownership and Location.

Section 80.3(h): Changed "rebuilder" references to "retailer" to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.32(e): Reworded to remove "rebuilder" reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.32(r) and (s): Removed "branch location" reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.36: Changed "rebuilder" reference in title of section to "retailer" to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.36(b): Changed "rebuilder" reference in title of subsection to "retailer" to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.40(b): Removed "rebuilder" reference to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.41(e)(4): Added fingerprints and criminal history check rule to comply with amendments to the Manufactured Housing Standards Act in HB 3361 (83rd Legislature, 2013 Regular Session).

Section 80.41(g): Added a provision for exemption of requiring a retailer's license for a one-time sale of up to three (3) manufactured homes in a 12-month period to comply with amendments to the Manufactured Housing Standards Act in HB 944 (83rd Legislature, 2013 Regular Session).

Section 80.90(c)(2)(A) and (B): Revised to allow the Department to correct an error on a Statement of Ownership and Location upon receipt of documentation deemed appropriate and approved by the Executive Director.

Section 80.93(b): Reworded to clarify the Tax Lien File Layout is located on the Department's website.

Deletion of Figure: 10 TAC §80.93(b): The Tax Lien File Layout is not required by statute to be part of the rules. Removing the form from the rules will be more efficient when revisions to the form are necessary since revisions will no longer be delayed by going through the rulemaking process.

Section 80.93(d): Reworded from future tense to past tense in regards to tax liens prior to 2001 being disregarded that were recorded after June 18, 2005.

SUBCHAPTER A. CODES, STANDARDS, TERMS, FEES AND ADMINISTRATION

10 TAC §80.3

The amended rule is adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rule.

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

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

TRD-201404775
Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 23, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 475-2206

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SUBCHAPTER C. LICENSEES' RESPONSIBILITIES AND REQUIREMENTS

10 TAC §80.32, §80.36

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

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

TRD-201404776
Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 23, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 475-2206

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SUBCHAPTER D. LICENSING

10 TAC §80.40, §80.41

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

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

TRD-201404777
Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 23, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 475-2206

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.90, §80.93

The amended rules are adopted under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by adoption of the amended rules.

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

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

TRD-201404778
Joe A. Garcia
Executive Director
Texas Department of Housing and Community Affairs
Effective date: November 23, 2014
Proposal publication date: August 29, 2014
For further information, please call: (512) 475-2206

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 62. COMMISSIONER'S RULES CONCERNING THE EQUALIZED WEALTH LEVEL

19 TAC §62.1071

The Texas Education Agency (TEA) adopts an amendment to §62.1071, concerning the equalized wealth level. The amendment is adopted without changes to the proposed text as published in the August 15, 2014, issue of the *Texas Register* (39 TexReg 6132) and will not be republished. The section establishes provisions relating to wealth equalization requirements. The amendment adopts as part of the Texas Administrative Code (TAC) the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year.* The manual contains the processes and procedures that the TEA uses in the administration of the provisions of the Texas Education Code (TEC), Chapter 41, and the fiscal, procedural, and administrative requirements that school districts subject to the TEC, Chapter 41, must meet.

Legal counsel with the TEA has advised that the procedures contained in each yearly manual for districts subject to wealth equalization be adopted as part of the TAC. The intent is to annually update 19 TAC §62.1071 to refer to the most recently published manual. Manuals adopted for previous school years will remain in effect with respect to those school years.

The amendment to 19 TAC §62.1071, Manual for Districts Subject to Wealth Equalization, adopts in rule the official TEA publication *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* as Figure: 19 TAC §62.1071(a).

Each school year's manual for districts subject to wealth equalization explains how districts subject to wealth equalization are identified; the fiscal, procedural, and administrative requirements those districts must meet; and the consequences for not meeting requirements. The manual also provides information on using the online Foundation School Program (FSP) System to fulfill certain requirements.

The only significant change to the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* from the *Manual for Districts Subject to Wealth Equalization 2013-2014 School Year* is the following.

Appendix B: Forms

A Chapter 41 district would no longer be required to send the TEA an "intent" letter. Beginning with the 2014-2015 school year, a Chapter 41 district would be able to use the District Intent form in the online FSP System to provide the information previously required to be provided with the intent letter.

The rule action places the specific procedures contained in the *Manual for Districts Subject to Wealth Equalization 2014-2015 School Year* in the TAC. The TEA administers the wealth equalization provisions of the TEC, Chapter 41, according to the procedures specified in each yearly manual for districts subject to wealth equalization. Data reporting requirements are addressed primarily through the online FSP System.

The rule action has no locally maintained paperwork requirements.

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

The public comment period on the proposal began August 15, 2014, and ended September 15, 2014. No public comments were received.

The amendment is adopted under the Texas Education Code (TEC), §41.006, which authorizes the commissioner of education to adopt rules necessary for the implementation of the TEC, Chapter 41.

The amendment implements the TEC, §41.006.

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

Filed with the Office of the Secretary of State on October 7, 2014.

TRD-201404701
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: October 27, 2014
Proposal publication date: August 15, 2014
For further information, please call: (512) 475-1497

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PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 228. REQUIREMENTS FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§228.1, 228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, 228.60

The State Board for Educator Certification (SBEC) adopts amendments to §§228.1, 228.2, 228.10, 228.20, 228.30, 228.35, 228.40, 228.50, and 228.60, concerning educator preparation programs (EPPs). The amendments to §§228.1, 228.40, 228.50, and 228.60 are adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4351) and will not be republished. The amendments to §§228.2, 228.10, 228.20, 228.30, and 228.35 are adopted with changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4351). The sections establish requirements for EPPs.

The adopted amendments update the rules to reflect current law, clarify minimum standards for all EPPs, allow for flexibility, and ensure consistency among EPPs in the state. The adopted amendments result from the SBEC's rule review of 19 TAC Chapter 228 conducted in accordance with Texas Government Code, §2001.039, and House Bill (HB) 2012, 83rd Texas Legislature, Regular Session, 2013, which requires the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to EPPs, and Senate Bill (SB) 460, 83rd Texas Legislature, Regular Session, 2013.

The Texas Education Code (TEC), §21.049, authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs. The TEC, §21.031, states that the SBEC is established to oversee all aspects of the certification and continuing education of public school educators and to ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state.

The adopted amendments to 19 TAC Chapter 228 reflect discussions held during stakeholder meetings with EPPs held on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014; March 3, 2014; and March 4, 2014, with district and regional administrators. Additional changes also reflect input received from the staffs at the TEA and the THECB.

Definitions

Language in §228.2 was amended to add a definition of *post-baccalaureate program* based on feedback from preparation programs, add a definition of *professional certification* for clarity, add a definition of *site supervisor* to better reflect the realities of a professional certification practicum, and update and standardize words and terms applicable to programs in the state to ensure effective communication among and with all educators and stakeholders in the state.

The definition of *clinical teaching* was amended to allow for 24-week, half-day assignments so that candidates in clinical teaching positions have time available to continue with or seek employment. The definition of *field supervisor* was also amended to require that field supervisors keep their certification current. In addition, the definition of *internship* was amended so that it better captures varied school calendars and internship start dates.

Language in §228.2 was also updated so definitions in 19 TAC Chapter 229, Accountability System for Educator Preparation Programs, will be uniform.

Since published as proposed, 19 TAC §228.2(7) and (16) was amended for clarity to add the phrase "that must be" to the definition of *educator preparation program* and add the phrase "that is" to the definition of *post-baccalaureate program,* respectively.

Approval Process

Language in §228.10 was amended to delete subsection (a) because the required submission is both redundant and could be obtained by the TEA. Language was removed in adopted subsection (b) in response to both stakeholder and Texas Sunset Commission recommendations so that all EPPs would be on a five-year review cycle. Language in adopted subsection (d) replaces current subsection (f) to allow programs to open additional locations provided they notify the TEA in advance and run those programs in accordance with their practices that were approved by the TEA.

In response to public comment, language in current §228.10(d) that would remove the clinical teaching approval process was amended to be retained as subsection (c) and the remaining subsections were re-lettered accordingly.

Governance of Educator Preparation Programs

Since published as proposed, 19 TAC §228.20(e) was amended to correct punctuation, change "shall" to "must" and add "be" for consistency in word usage, and add the phrase "to become effective" for clarity.

Educator Preparation Curriculum

Language in §228.30 was amended to replace the majority of the curriculum requirements with the Texas teacher standards so that preparation is aligned with evaluation and professional development. Additionally, language was added to reflect current law that requires training in the detection of students with mental or emotional disorders, in accordance with the TEC, §21.044(c-1).

In response to public comment, language in §228.30(b)(5) was amended to include reference to TEC, §21.044(c-2).

Preparation Program Coursework and/or Training

Language in §228.35 was amended to remove the requirement that programs spend six clock-hours on certification test preparation. The amendment also removes the requirement that the TEA keep a list of approved alternative sites and methods for field-based experiences.

Adopted subsection (g) was also added to differentiate the components of field observations between initial certification of teachers and professional certification.

Since published as proposed, 19 TAC §228.35(d)(2) was amended to correct punctuation and add the phrase "at least" for clarity.

In response to public comment, language in §228.35(g)(2) that would require a minimum of 45 minutes of observation time by the field supervisor for a professional certification candidate to be on-site and face-to-face was deleted and the remaining paragraphs were renumbered accordingly.

Technical Changes

Minor technical edits such as updating cross references were also made throughout Chapter 228.

Since published as proposed, 19 TAC §228.2(4) and §228.30(b) were amended to correct punctuation.

The adopted amendments have no additional procedural or reporting implications. The adopted amendments have no additional locally maintained paperwork requirements.

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

The following comments were received regarding the proposed amendments.

Comment: The associate dean for teacher education for The University of Texas at San Antonio (UTSA) commented that removing the term *student teaching* throughout 19 TAC Chapter 228 and referring to *student teaching* in rule under the umbrella term *clinical teaching* would be confusing for many and would require universities to change their course catalogs.

Board Response: The SBEC disagreed that removing the term *student teaching* throughout 19 TAC Chapter 228 and referring to *student teaching* in rule under the umbrella term *clinical teaching* would be confusing for many and would require universities to change their course catalogs. The removal of the term *student teaching* from 19 TAC Chapter 228 is necessary to avoid confusion that may arise from using two terms defined the same way in rule. The definition of *clinical teaching* refers to *student teaching* as being interchangeable with *clinical teaching.* The proposed amendments to 19 TAC Chapter 228 do not preclude any entity from continuing to use the term *student teaching* as it is defined in current rule on transcripts, in course catalogs, or when corresponding with education entities.

Comment: The associate dean for teacher education for UTSA commented that the requirement for field-based experience taking place in an "authentic school setting in a public school accredited by the TEA" should not be removed from 19 TAC §228.2(9).

Board Response: The SBEC provides the following clarification. The requirement that field-based experience take place in an authentic school setting in a public school accredited by the TEA would be moved to 19 TAC §228.35(d)(1).

Comment: The associate dean for teacher education for UTSA commented that the word "interactive" should not be removed from 19 TAC §228.2(9).

Board Response: The SBEC disagreed. Field-based experience can be interactive only at the discretion of the teacher hosting the candidate, and the candidate may or may not be properly prepared to interact with students at the time of the field-based experience. All of the requirements of field-based experience can be achieved without the experience being interactive.

Comment: The University of Texas at Austin (UT) commented that the proposed amendment to the definition of field-based experience in 19 TAC §228.2(9) should be expanded to include "under supervision."

Board Response: The SBEC provides the following clarification. The change to the definition of field-based experiences in 19 TAC §228.2(9) would be a technical change, and the requirements associated with field-based experience would be moved to 19 TAC §228.35(d)(1). In that section, the phrase "under supervision" remains a part of the requirements for field-based experience.

Comment: A representative of Career in Education commented that the approval process for the addition of a clinical teaching component for alternative certification programs, captured in current 19 TAC §228.10(d), should remain in rule so that educator preparation programs (EPPs) without clinical teaching components have a clear process for receiving approval for adding clinical teaching.

Board Response: The SBEC agreed and took action to reinstate the approval process for the addition of a clinical teaching component for alternative certification programs as new subsection (c).

Comment: UT commented that the proposed amendment to 19 TAC §228.30(b)(3) is unclear as to pedagogical content knowledge and is duplicative in listing "knowledge of students and student learning" under subsection (b)(3)(B) and then articulating two specific cases of knowledge of students in subsection (b)(4) and (5).

Board Response: The SBEC disagreed. The proposed amendment to 19 TAC §228.30(b)(3) makes reference to the Texas Teaching Standards found in 19 TAC §149.1001, Teacher Standards. The labels listed in 19 TAC §228.30(b)(3) are not the entirety of the standards, and EPPs would need to align their preparation curriculum with the entirety of the standards in 19 TAC §149.1001, not simply the broad labels found in 19 TAC §228.30(b)(3). Within those standards are sections that address content-based pedagogy. Additionally, the specific examples of knowledge of students captured in 19 TAC §228.30(b)(4) and (5) have specific statutory requirements and thus need to be separately listed so that programs reference the appropriate statutes and comply with those statutory requirements.

Comment: Disability Rights Texas commented that proposed 19 TAC §228.30(b)(5) should be amended to include TEC, §21.044(c-2), as that section also captures a program's responsibilities around instruction in the detection of students with mental or emotional disorders.

Board Response: The SBEC agreed and amended 19 TAC §228.30(b)(5) to add the reference to TEC, §21.044(c-2).

Comment: The associate dean for teacher education for UTSA commented that all 30 clock-hours indicated in proposed 19 TAC §228.35(d)(1) should fit the requirements articulated in 19 TAC §228.35(d)(1)(A) - (E) because this would better prepare candidates for clinical teaching.

Board Response: The SBEC provides the following clarification. The 15 clock-hours requirement of field-based experience that meets the conditions articulated in 19 TAC §228.35(d)(1)(A) - (E) matches the statutory requirement for field-based experience in the TEC, §21.051(b).

Comment: Nine individuals, including seven from Lamar University, commented that the proposed amendment that adds 19 TAC §228.35(g) should go further in allowing EPPs the flexibility to conduct all field supervision observations virtually because conducting on-site visits would unduly burden rural candidates by limiting access to programs and would increase program costs substantially, which would limit accessibility for candidates. In addition, the commenters stated that empirical evidence does not exist that clearly indicates that on-site observations are more effective than virtual observations.

Board Response: The SBEC determined that additional research and stakeholder input regarding this issue should be obtained and took action to delete from the rule adoption proposed 19 TAC §228.35(g)(2).

Comment: The president of iteachTexas requested clarification of the implementation date and questioned whether the implementation date would be the same as the proposed effective date for the proposed revisions to 19 TAC Chapter 227, Provisions for Educator Preparation Candidates.

Board Response: The SBEC provides the following clarification. The proposed amendments to 19 TAC Chapter 228 would be effective October 26, 2014, 20 days after filing as adopted with the *Texas Register.*

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC Chapter 228 at the September 19, 2014, SBOE meeting.

The amendments are adopted under the Texas Education Code (TEC), §§21.031, which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; §21.044, which requires the SBEC to propose rules establishing training requirements a person must accomplish to obtain a certificate, enter an internship, or enter an induction-year program; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs (EPPs) based on the following information that is disaggregated with respect to sex and ethnicity: results of the certification examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; §21.049(a), which authorizes the SBEC to adopt rules providing for educator certification programs as an alternative to traditional EPPs; §21.050(a), which states that a person who applies for a teaching certificate for which SBEC rules require a bachelor's degree must possess a bachelor's degree received with an academic major or interdisciplinary academic major, including reading, other than education, that is related to the curriculum as prescribed under TEC, Chapter 28, Subchapter A; §21.050(c), which states that a person who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, may not be required to participate in any field experience or internship consisting of student teaching to receive a teaching certificate; and §21.051, which provides a requirement that before a school may employ a certification candidate as a teacher of record, the candidate must have completed at least 15 hours of field-based experience in which the candidate was actively engaged at an approved school in instructional or educational activities under supervision.

The amendments implement the TEC, §§21.031, 21.041(b)(1) and (2), 21.044, 21.045(a), 21.049(a), 21.050(a) and (c), and 21.051.

§228.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree.

(3) Candidate--An individual who has been admitted into an educator preparation program, including an individual who has been accepted on a contingency basis; also referred to as an enrollee or participant.

(4) Clinical teaching--A minimum 12-week, full-day or 24-week, half-day educator assignment through an educator preparation program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(5) Clock-hours--The actual number of hours of coursework or training provided; for purposes of calculating the training and coursework required by this chapter, one semester credit hour at an accredited university is equivalent to 15 clock-hours. Clock-hours of field-based experiences, clinical teaching, internship, and practicum are actual hours spent in the required educational activities and experiences.

(6) Cooperating teacher--The campus-based mentor teacher for the clinical teacher.

(7) Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification fields.

(8) Entity--The legal entity that is approved to deliver an educator preparation program.

(9) Field-based experiences--Introductory experiences for a certification candidate involving reflective observation of Early Childhood-Grade 12 students, teachers, and faculty/staff members engaging in educational activities in a school setting.

(10) Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators.

(11) Head Start Program--The federal program established under the Head Start Act (42 United States Code, §9801 et seq.) and its subsequent amendments.

(12) Internship--A supervised, full-time educator assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(13) Late hire--An individual who has not been accepted into an educator preparation program before June 15 and who is hired for a teaching assignment by a school after June 15 or after the school's academic year has begun.

(14) Mentor--For a classroom teacher, a certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the teacher during his or her intern year in areas such as planning, classroom management, instruction, assessment, working with parents, obtaining materials, district policies; and who reports the teacher's progress to that teacher's educator preparation program.

(15) Pedagogy--The art and science of teaching, incorporating instructional methods that are developed from scientifically-based research.

(16) Post-baccalaureate program--An approved educator preparation program that is designed for individuals who already hold at least a bachelor's degree and that is approved by the State Board for Educator Certification to recommend candidates for certification.

(17) Practicum--A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.

(18) Professional certification--Certification for superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.

(19) Site supervisor--For a practicum, a certified educator who has experience in the aspect(s) of the professional certification being pursued by the candidate; who has completed training or orientation for site supervision; who guides, assists, and supports the candidate during the practicum; and who reports the candidate's progress to the candidate's educator preparation program.

(20) Teacher of record--An educator employed by a school district who teaches the majority of the instructional day in an academic instructional setting and is responsible for evaluating student achievement and assigning grades.

(21) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

(22) Texas Essential Knowledge and Skills (TEKS)--The Kindergarten-Grade 12 state curriculum in Texas adopted by the State Board of Education and used as the foundation of all state certification examinations.

§228.10. Approval Process.

(a) New Entity Approval. An entity seeking initial approval to deliver an educator preparation program (EPP) shall submit an application and proposal with evidence indicating the ability to comply with the provisions of this chapter and Chapter 227 of this title (relating to Provisions for Educator Preparation Candidates). The proposal shall include the following program approval components: entity commitment to adequate preparation of certification candidates, program standards, and community collaboration; criteria for admission to an EPP; curriculum; program delivery and evaluation; and a plan for ongoing support of the candidates. The proposal must also identify the certificates proposed to be offered by the entity and meet applicable federal statutes or regulations. The proposal will be reviewed by the Texas Education Agency (TEA) staff and a pre-approval site visit will be conducted. The TEA staff shall recommend to the State Board for Educator Certification (SBEC) whether the entity should be approved.

(b) Continuing Entity Approval. An entity approved by the SBEC under this chapter shall be reviewed at least once every five years under procedures approved by the TEA staff; however, a review may be conducted at any time at the discretion of the TEA staff. At the time of the review, the entity shall submit to the SBEC a status report regarding its compliance with existing standards for EPPs and the entity's original proposal.

(c) Approval of Clinical Teaching for an Alternative Certification Program. An alternative certification program seeking approval to implement a clinical teaching component shall submit a description of the following elements of the program for approval by the TEA staff:

(1) general clinical teaching program description, including conditions under which clinical teaching may be implemented;

(2) selection criteria for clinical teachers;

(3) selection criteria for mentor teachers;

(4) description of support and communication between candidates, mentors, and the alternative certification program;

(5) description of program supervision; and

(6) description of how candidates are evaluated.

(d) Addition of Certificate Fields.

(1) An EPP that is rated "accredited," as provided in §229.4 of this title (relating to Determination of Accreditation Status), may request additional certificate fields be approved by TEA staff, by submitting the curriculum matrix; a description of how the standards for Texas educators are incorporated into the EPP; and documentation showing that the program has the staff knowledge and expertise to support individuals participating in each certification field being requested. The curriculum matrix must include the standards, framework competencies, applicable Texas Essential Knowledge and Skills, course and/or module names, and the benchmarks or assessments used to measure successful program progress. An EPP rated "accredited," as provided in §229.4 of this title, and currently approved to offer a content area certificate for which the SBEC is changing the grade level of the certificate may request to offer the preapproved content field at different grade levels by submitting a modified curriculum matrix that includes the standards, course and/or module names, and the benchmarks or assessments used to measure successful program progress. The requested additional certificate fields must be within the classes of certificates for which the EPP has been previously approved by the SBEC. An EPP that is not rated "accredited" may not apply to offer additional certificate fields or classes of certificates.

(2) An EPP that is rated "accredited" may request the addition of certificate fields in a class of certificates that has not been previously approved by the SBEC, but must present a full proposal for consideration and approval by the SBEC.

(e) Addition of Program Locations. An EPP that is rated "accredited," as provided in §229.4 of this title, may open additional locations, provided the program informs the SBEC of any additional locations at which the program is providing educator preparation 60 days

prior to providing educator preparation at the location. Additional program locations must operate in accordance with the program components under which the program has been approved to operate.

(f) Contingency of Approval. Approval of an EPP by the SBEC or by the TEA staff, including each specific certificate field, is contingent upon approval by other lawfully established governing bodies such as the Texas Higher Education Coordinating Board, boards of regents, or school district boards of trustees. Continuing EPP approval is contingent upon compliance with superseding state and federal law.

§228.20. Governance of Educator Preparation Programs.

(a) Preparation for the certification of educators may be delivered by an institution of higher education, regional education service center, public school district, or other entity approved by the State Board for Educator Certification (SBEC) under §228.10 of this title (relating to Approval Process).

(b) The preparation of educators shall be a collaborative effort among public schools accredited by the Texas Education Agency (TEA) and/or TEA-recognized private schools; regional education service centers; institutions of higher education; and/or business and community interests; and shall be delivered in cooperation with public schools accredited by the TEA and/or TEA-recognized private schools. An advisory committee with members representing as many as possible of the groups identified as collaborators in this subsection shall assist in the design, delivery, evaluation, and major policy decisions of the educator preparation program (EPP). The approved EPP shall approve the roles and responsibilities of each member of the advisory committee and shall meet a minimum of twice during each academic year.

(c) The governing body and chief operating officer of an entity approved to deliver educator preparation shall provide sufficient support to enable the EPP to meet all standards set by the SBEC and shall be accountable for the quality of the EPP and the candidates whom the program recommends for certification.

(d) All EPPs must be implemented as approved by the SBEC as specified in §228.10 of this title.

(e) Proposed amendments to an EPP must be submitted to the TEA staff and be approved prior to implementation. Significant amendments, related to the five program-approval components specified in §228.10(a) of this title, must be approved by the SBEC to become effective. The EPP will be notified in writing of the approval or denial of its proposal within 60 days following a determination by the SBEC.

§228.30. Educator Preparation Curriculum.

(a) The educator standards adopted by the State Board for Educator Certification (SBEC) shall be the curricular basis for all educator preparation and, for each certificate, address the relevant Texas Essential Knowledge and Skills (TEKS).

(b) The curriculum for each educator preparation program shall rely on scientifically based research to ensure teacher effectiveness and align to the TEKS. Coursework and training should be sustained, rigorous, interactive, student-focused, and performance-based. The following subject matter shall be included in the curriculum for candidates seeking initial certification:

(1) reading instruction, including instruction that improves students' content-area literacy;

(2) the code of ethics and standard practices for Texas educators, pursuant to Chapter 247 of this title (relating to Educators' Code of Ethics);

(3) the skills and competencies captured in the Texas teacher standards, as indicated in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards), which include:

(A) instructional planning and delivery;

(B) knowledge of students and student learning;

(C) content knowledge and expertise;

(D) learning environment;

(E) data-driven practice; and

(F) professional practices and responsibilities;

(4) instruction in detection and education of students with dyslexia, as indicated in the Texas Education Code (TEC), §21.044(b); and

(5) instruction in detection of students with mental or emotional disorders, as indicated in the TEC, §21.044(c-1) and (c-2).

§228.35. Preparation Program Coursework and/or Training.

(a) Coursework and/or Training for Candidates Seeking Initial Certification.

(1) An educator preparation program (EPP) shall provide coursework and/or training to ensure the educator is effective in the classroom.

(2) Professional development should be sustained, intensive, and classroom focused.

(3) An EPP shall provide each candidate with a minimum of 300 clock-hours of coursework and/or training. A candidate who does not qualify as a late hire who is issued a probationary certificate after September 1, 2012, may not be employed by a school district as a teacher of record until the candidate completes a minimum of 30 clock-hours of field-based experience or clinical teaching in which the candidate is actively engaged in instructional or educational activities under supervision at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose, as provided in this section. Unless a candidate qualifies as a late hire, a candidate shall complete the following prior to any clinical teaching or internship:

(A) a minimum of 30 clock-hours of field-based experience. Up to 15 clock-hours of this field-based experience may be provided by use of electronic transmission or other video or technology-based method; and

(B) 80 clock-hours of coursework and/or training.

(4) All coursework and/or training shall be completed prior to EPP completion and standard certification.

(5) With appropriate documentation such as certificate of attendance, sign-in sheet, or other written school district verification, 50 clock-hours of training may be provided by a school district and/or campus that is an approved TEA continuing professional education provider.

(6) Each EPP must develop and implement specific criteria and procedures that allow candidates to substitute prior or ongoing experience and/or professional training for part of the educator preparation requirements, provided that the experience or training is not also counted as a part of the internship, clinical teaching, or practicum requirements, and is directly related to the certificate being sought.

(b) Coursework and/or Training for Professional Certification. An EPP shall provide coursework and/or training to ensure that the edu-

cator is effective in the professional assignment. An EPP shall provide a candidate with a minimum of 200 clock-hours of coursework and/or training that is directly aligned to the state standards for the applicable certification field.

(c) Late Hire Provisions. A late hire for a school district teaching position may begin employment under a probationary certificate before completing the pre-internship requirements of subsection (a)(3) of this section and, if applicable, 15 clock-hours of active, supervised experience, but shall complete these requirements within 90 school days of assignment.

(d) Educator Preparation Program Delivery. An EPP shall provide evidence of ongoing and relevant field-based experiences throughout the EPP in a variety of educational settings with diverse student populations, including observation, modeling, and demonstration of effective practices to improve student learning.

(1) For initial certification, each EPP shall provide field-based experiences, as defined in §228.2 of this title (relating to Definitions), for a minimum of 30 clock-hours. The field-based experiences must be completed prior to assignment in an internship or clinical teaching. Up to 15 clock-hours of field-based experience may be provided by use of electronic transmission or other video or technology-based method. Field-based experiences must include 15 clock-hours in which the candidate, under supervision, is actively engaged in instructional or educational activities that include:

(A) authentic school settings in a public school accredited by the TEA or other school approved by the TEA for this purpose;

(B) instruction by content certified teachers;

(C) actual students in classrooms/instructional settings with identity-proof provisions;

(D) content or grade-level specific classrooms/instructional settings; and

(E) reflection of the observation.

(2) For initial certification, each EPP shall also provide at least one of the following:

(A) clinical teaching, as defined in §228.2 of this title, for a minimum of 12 weeks, full day or 24 weeks, half day; or

(B) internship, as defined in §228.2 of this title, for a minimum of one full school year for the assignment that matches the certification field for which the individual is prepared by the EPP. The individual would hold a probationary certificate and be classified as a "teacher" as reported on the campus Public Education Information Management System (PEIMS) data. An EPP may permit an internship of up to 30 school days less than the minimum if due to maternity leave, military leave, illness, or late hire date.

(i) An internship or clinical teaching for an Early Childhood-Grade 6 candidate may be completed at a Head Start Program with the following stipulations:

(I) a certified teacher is available as a trained mentor;

(II) the Head Start program is affiliated with the federal Head Start program and approved by the TEA;

(III) the Head Start program teaches three- and four-year-old students; and

(IV) the state's pre-kindergarten curriculum guidelines are being implemented.

(ii) An internship, clinical teaching, or practicum experience must take place in an actual school setting rather than a distance learning lab or virtual school setting.

(3) For candidates seeking professional certification, each EPP shall provide a practicum, as defined in §228.2 of this title, for a minimum of 160 clock-hours.

(4) Subject to all the requirements of this section, the TEA may approve a school that is not a public school accredited by the TEA as a site for field-based experience, internship, clinical teaching, and/or practicum.

(A) All Department of Defense Education Activity (DoDEA) schools, wherever located, and all schools accredited by the Texas Private School Accreditation Commission (TEPSAC) are approved by the TEA for purposes of field-based experience, internship, clinical teaching, and/or practicum.

(B) An EPP may file an application with the TEA for approval, subject to periodic review, of a public school, a private school, or a school system located within any state or territory of the United States, as a site for field-based experience or for video or other technology-based depiction of a school setting. The application shall be in a form developed by the TEA staff and shall include, at a minimum, evidence showing that the instructional standards of the school or school system align with those of the applicable Texas Essential Knowledge and Skills (TEKS) and SBEC certification standards.

(C) An EPP may file an application with the TEA for approval, subject to periodic review, of a public or private school located within any state or territory of the United States, as a site for an internship, clinical teaching, and/or practicum required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum:

(i) the accreditation(s) held by the school;

(ii) a crosswalk comparison of the alignment of the instructional standards of the school with those of the applicable TEKS and SBEC certification standards;

(iii) the certification, credentials, and training of the field supervisor(s) who will supervise candidates in the school; and

(iv) the measures that will be taken by the EPP to ensure that the candidate's experience will be equivalent to that of a candidate in a Texas public school accredited by the TEA.

(D) An EPP may file an application with the SBEC for approval, subject to periodic review, of a public or private school located outside the United States, as a site for clinical teaching required by this chapter. The application shall be in a form developed by the TEA staff and shall include, at a minimum, the same elements required in subparagraph (C) of this paragraph for schools located within any state or territory of the United States, with the addition of a description of the on-site program personnel and program support that will be provided and a description of the school's recognition by the U.S. State Department Office of Overseas Schools.

(e) Campus Mentors and Cooperating Teachers. In order to support a new educator and to increase teacher retention, an EPP shall collaborate with the campus administrator to assign each candidate a campus mentor during his or her internship or assign a cooperating teacher during the candidate's clinical teaching experience. The EPP is responsible for providing mentor and/or cooperating teacher training that relies on scientifically-based research, but the program may allow the training to be provided by a school district, if properly documented.

(f) Ongoing Educator Preparation Program Support for Initial Certification of Teachers. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. The field supervisor shall document instructional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's campus administrator. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Each observation must be at least 45 minutes in duration, must be conducted by the field supervisor, and must be on the candidate's site in a face-to-face setting.

(2) An EPP must provide the first observation within the first six weeks of all assignments.

(3) For an internship, an EPP must provide a minimum of two formal observations during the first four months of the assignment and one formal observation during the last five months of the assignment.

(4) For clinical teaching, an EPP must provide a minimum of three observations during the assignment, which is a minimum of 12 weeks.

(g) Ongoing Educator Preparation Program Support for Professional Certification. Supervision of each candidate shall be conducted with the structured guidance and regular ongoing support of an experienced educator who has been trained as a field supervisor. The initial contact, which may be made by telephone, email, or other electronic communication, with the assigned candidate must occur within the first three weeks of assignment. The field supervisor shall document professional practices observed, provide written feedback through an interactive conference with the candidate, and provide a copy of the written feedback to the candidate's site supervisor. Informal observations and coaching shall be provided by the field supervisor as appropriate.

(1) Observations must be at least 135 minutes in duration in total throughout the practicum and must be conducted by the field supervisor.

(2) An EPP must provide the first observation within the first six weeks of all assignments.

(3) An EPP must provide a minimum of three observations during the term of the practicum.

(h) Exemption. Under the Texas Education Code (TEC), §21.050(c), a candidate who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an exemption from tuition and fees under the TEC, §54.363, is exempt from the requirements of this chapter relating to field-based experience or internship consisting of clinical teaching.

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 229. ACCOUNTABILITY SYSTEM FOR EDUCATOR PREPARATION PROGRAMS

19 TAC §§229.2 - 229.8

The State Board for Educator Certification (SBEC) adopts amendments to §§229.2 - 229.8, concerning the accountability system for educator preparation programs (EPPs). The amendments to §§229.2 - 229.5, 229.7, and 229.8 are adopted with changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4358). The amendment to §229.6 is adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4358) and will not be republished. The sections establish the process used for issuing annual accreditation ratings for all EPPs.

The adopted amendments update and make uniform definitions, modify the standards used for enforcing the reporting of data, clarify the standards used for accountability, adjust the small group exception requirements, and establish a new process for challenging sanctions imposed on programs that fail the accountability system.

House Bill 2012, 83rd Texas Legislature, Regular Session, 2013, requires the Texas Education Agency (TEA), the SBEC, and the Texas Higher Education Coordinating Board (THECB) to perform a joint review of the existing standards for preparation and admission that are applicable to EPPs. Due to its related nature, a review of Chapter 229 was also conducted and, as a result, adopted amendments to Chapter 229 are necessary.

The Texas Education Code (TEC), §21.045, states that the SBEC shall propose rules establishing standards to govern the approval and continuing accountability of all EPPs.

The adopted amendments reflect discussions held during stakeholder meetings with EPPs on January 14, 2014; February 18, 2014; and March 26, 2014, and regional stakeholder meetings held on February 27, 2014; March 3, 2014; and March 4, 2014, with district and regional administrators. Additional changes also reflect input received from the staffs at the TEA and the THECB.

Definitions

Language in §229.2 was amended to add a definition of *consecutively measured years* to clarify the effect to changes made to the small group exception size, update the definition of *practicum* to better reflect the context of professional certification programs, and delete definitions of words and terms that are no longer used in Chapter 229.

Language in §229.2 was also updated so definitions in 19 TAC Chapter 228, Requirements for Educator Preparation Programs, are uniform.

Since published as proposed, 19 TAC §229.2(9) and (14) was amended to correct punctuation in the definition of *clinical teaching* and add the phrase "that must be" to the definition of *educator preparation program,* respectively. Also, in response to public

comment, 19 TAC §229.2(17) was amended to reinstate the last sentence of the definition of *field supervisor* that addresses the assignment of a campus mentor or cooperating teacher.

Required Submissions of Information, Surveys, and Other Data

Under the current rules, individuals who hold certificates, school districts, charters, and EPPs may be held accountable for failure to report required data only if that failure was done willfully or recklessly, which required the SBEC to prove the mindset and intent of those who did not report data and, therefore, made the rule essentially unenforceable in most cases. Adopted amendments to Chapter 229 remove the willfully and recklessly requirement to allow SBEC the option to hold these entities accountable for failure to report required data without first having to prove mindset and intent.

Since published as proposed, Figure: 19 TAC §229.3(f)(1) was amended to reflect technical edits that remove outdated timeline references and update data submission protocol related to Title II of the Elementary and Secondary Education Act (ESEA).

In response to public comment, language in §229.3(b) - (d) was amended to change *shall* to *may* to provide the SBEC with discretion to pursue those individuals and entities who fail to provide the TEA staff with data and information required by this chapter.

Determination of Accreditation Status

Language in §229.4 was amended to replace *consecutive* with *consecutively measured* to accommodate situations where EPPs fall within the small group exception provisions. Subsection (g) was amended to increase the EPP candidate group size needed to be measured against an accountability standard. The group size was increased from 11 to 21 so that no measure related to a single EPP candidate could be the sole cause of the failure of an EPP to meet a standard. The language was also amended to more clearly articulate the process for determining a measure when groups fail to meet the threshold of 21 or more candidates.

Since published as proposed, 19 TAC §229.4(a)(1) and (4) and (g)(1) was amended for clarity to change the phrases "shall be" and "will be" to "is" and add the phrase "in the group," respectively. The change to "in the group" clarifies that the number of individuals in the group must exceed 20 for a candidate group to be measured against performance standards.

Sanctions, Reviews, and Contested Cases

Under current rule, when an EPP is assigned a failing accreditation rating by SBEC and is subject to sanctions or to suspension or revocation of its ability to recommend educator candidates, the EPP has the opportunity to request a record review by TEA staff. After the record review, the proposal goes to the SBEC for adoption. In cases of revocation, the SBEC decision is appealable to the State Office of Administrative Hearings (SOAH), which reviews the SBEC decision under a substantial evidence standard. The SOAH decision is final and not appealable.

Adopted amendments to Chapter 229 modify this process. When TEA staff proposes to assign to an EPP a failing accreditation rating that makes the EPP subject to sanctions or suspension or revocation of its ability to recommend educator candidates, the EPP has the opportunity to request an informal hearing with TEA staff before the proposed accreditation is presented to SBEC for adoption. After the informal hearing, TEA staff will prepare a final recommendation to submit to the SBEC and will notify the EPP of the proposed final recommendation. If the final recommendation proposes revocation, the EPP has an opportunity to request a hearing at SOAH for an Administrative Law Judge (ALJ) to address the appropriateness of the proposed revocation before TEA submits the final recommendation to the SBEC. SOAH will hear the case on a preponderance of the evidence standard, as SOAH hears disciplinary cases for certifications and licenses, rather than on a substantial evidence standard. The ALJ's proposal for decision will then be sent to the SBEC for final determination. After SBEC's determination becomes final, an EPP could contest an SBEC decision, in district court in Austin, subject to the requirements of the Administrative Procedure Act.

These changes will simplify the current review process, remove the TEA as acting as a tribunal, provide EPPs with an impartial arbiter for revocation determinations, and restore SBEC as the final arbiter of decisions.

Since published as proposed, 19 TAC §229.5(c) was amended to more clearly state that it is a candidate's performance in a particular field that is being measured.

Since published as proposed, 19 TAC §229.5(e) was amended to modify the phrase "proposed action taken" to read "action proposed to be taken" to more clearly state that notice is given to the EPP before any proposed action is taken.

Since published as proposed, 19 TAC §229.6(e) was amended to clarify that an EPP may agree in writing to accept a final revocation without further proceedings.

Since published as proposed, 19 TAC §229.7(c) was amended to change the word "decision" to "proposed recommendation" to more accurately identify the document that TEA staff issues. Subsection (c)(2)(E) was amended to modify the phrase "substantial evidence" to "a preponderance of the evidence" to comport with the revised standard of review at SOAH.

Since published as proposed, 19 TAC §229.7(d) was amended to rephrase the provision to make it consistent with the requirement that the request for informal review needs to be received by TEA by the applicable deadline.

Since published as proposed, 19 TAC §229.7(f) was amended to clarify that an EPP may agree in writing to accept a final revocation without further proceedings.

Since published as proposed, 19 TAC §229.8(c) was amended to modify the phrase "upon a final decision" to read "upon the finality of a decision" to clarify that certain actions that follow from a decision to close a program happen only after a program's right to file such things as motions for rehearing, etc., have expired.

Technical Changes

Minor technical edits such as updating cross references were also made throughout Chapter 229.

The adopted amendments have no additional procedural or reporting implications. The adopted amendments have no additional locally maintained paperwork requirements.

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

The following comments were received regarding the proposed amendments.

Comment: The president of iteachTexas commented that the last sentence in 19 TAC §229.2(17) should be reinstated to prevent confusion about the ability of one individual to act as both mentor and field supervisor to a candidate.

Board Response: The SBEC agreed and took action to reinstate language in 19 TAC §229.2(17) that addresses the assignment of a campus mentor or cooperating teacher.

Comment: The president of iteachTexas requested clarification on the citation of the Higher Education Act in 19 TAC §229.2(21) as authority in data reporting requirements for EPPs, as the Higher Education Act does not govern certain alternative certification programs.

Board Response: The SBEC provides the following clarification. Section 229.2(21) serves as a definition for the Higher Education Act, not as the sole recognition of authority for EPP data reporting requirements. Section 229.3(a) also provides recognition of data reporting requirements as indicated in the TEC.

Comment: The president of iteachTexas supported removal of *willfully or recklessly* from 19 TAC §229.3. The commenter noted that this will help the TEA ensure that EPPs continue to meet the highest standards of quality.

Board Response: The SBEC agreed.

Comment: The governmental relations manager of the Association of Texas Professional Educators (ATPE) commented that under §229.3, the SBEC must pursue sanctions for failure to report required information under Chapter 229 against certified educators, school districts, and charter schools. This mandatory requirement removes discretion from the SBEC on whether to pursue sanctions.

Board Response: The SBEC agreed and took action to change "shall" to "may" in regard to pursuing sanctions for reporting purposes against certified educators, public schools, and charters. The language regarding certified educators can be read to require pursuit of sanctions (though it does not dictate what type of sanction) and requires the SBEC to refer public schools and charters for failure to report requirements under Chapter 229 and the TEC, §21.0452. This change aligns §229.3 with §229.6(b) where sanctions for reporting violations may be pursued against EPPs.

Comment: The ATPE commented that removing the "willfully or recklessly" standard for failure to report under §229.3 will create an unreasonable, automatic sanction on innocent educators. Absent retaining "willfully or recklessly," the SBEC should apply at least a negligence standard.

Board Response: The SBEC agreed in part and disagreed in part.

Charters and school districts are currently required to report under the Public Education Information Management System (PEIMS) and no *mens rea* requirement applies to that reporting. Changing the requirement from a "shall" to a "may" in referring uncompliant schools and charters will provide SBEC discretion to pursue in instances where the entities continually refuse to come into compliance with reporting requirements.

For individual certificate holders, only two reports are currently required. Certificate applicants must submit an exit survey prior to receiving their certificate. This penalty is self-fulfilling and should be noted does not require a *mens rea.* Failure to submit an exit survey means no issuance of a certificate.

The other report required of certificate holders is a principal survey of beginning teachers. This report is necessary for SBEC to implement its accountability standards. Low response rates from principals jeopardize the validity of the accountability system. Removing the *mens rea* reinforces the importance of submitting this data so SBEC can fulfill its accountability functions. By changing the "shall" to "may," as indicated earlier, this allows SBEC discretion to pursue those who continue to fail to report. Ultimately, the sanctions come before SBEC, which will decide the final consequence(s).

Absent removing "willfully or recklessly," applying a negligence standard reinforces the importance of reporting while retaining some safeguards for certificate holders. SBEC could also consider whether a *mens rea* is more appropriate for individual certificate holders rather than entities.

Comment: The assistant executive director of governmental relations for the Texas Association of School Administrators (TASA) commented that removing the "willfully or recklessly" standard for failure to report under §229.3 will be fundamentally unfair to individuals, public schools, or open-enrollment charter schools who have legitimate reasons for not having provided the required information.

Board Response: The SBEC agreed and took action to change "shall" to "may" in regard to pursuing sanctions for reporting purposes against certified educators, public schools, and charters.

Comment: The president of iteachTexas commented that the survey tools used to satisfy 19 TAC §229.3(f)(2) and §229.4(a)(4) should be designed to accommodate the different realities for candidates that participate in clinical teaching and candidates that participate in an internship.

Board Response: The SBEC agreed. Although the language itself does not need to be changed to accommodate this concern, the TEA does plan to conduct a process, which would include stakeholders, whereby the tools designed to implement these sections do fit the diverse settings for clinical teaching and internships.

Comment: The president of iteachTexas requested clarification of the implementation date and questioned whether the implementation date would be the same as the one proposed for Chapter 227.

Board Response: The SBEC provides the following clarification. The adopted amendments to 19 TAC §§229.2 - 229.8 take effect October 26, 2014, 20 days after filing as adopted with the *Texas Register.*

The State Board of Education (SBOE) took no action on the review of the proposed amendments to 19 TAC §§229.2 - 229.8 at the September 19, 2014 SBOE meeting.

The amendments are adopted under the Texas Education Code (TEC), §§21.041(c), which requires the State Board for Educator Certification (SBEC) to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of the TEC, Chapter 21, Subchapter B; §21.041(d), which authorizes the SBEC to adopt fees for the approval or renewal of an educator preparation program or for the addition of a certificate or field of certification to the scope of a program's approval; §21.045(a), which authorizes the SBEC to propose rules establishing standards to govern the approval and continuing accountability of all educator preparation programs based on the following information that is disaggregated with respect to sex and ethnicity: results of the certifi-

cation examinations prescribed under the TEC, §21.048(a); performance based on the appraisal system for beginning teachers adopted by the SBEC; achievement, including improvement in achievement, of students taught by beginning teachers for the first three years following certification, to the extent practicable; and compliance with SBEC requirements regarding the frequency, duration, and quality of structural guidance and ongoing support provided by field supervisors to beginning teachers during their first year in the classroom; §21.045(b), which states that each educator preparation program shall submit specific performance data, information, and data elements as required by the SBEC for an annual performance report to ensure candidate access and equity; §21.045(c), which states that the SBEC shall propose rules establishing performance standards based on subsection (a) for the accountability system for educator preparation for accrediting educator preparation programs; §21.0451, which states that the SBEC shall propose rules for the sanction of educator preparation programs that do not meet accountability standards and shall annually review the accreditation status of each educator preparation program. The costs of technical assistance required under subsection (a)(2)(A) or the costs associated with the appointment of a monitor under subsection (a)(2)(C) shall be paid by the sponsor of the educator preparation program; and §21.0452, which states that to assist persons interested in obtaining teaching certification in selecting an educator preparation program and assist school districts in making staffing decisions, the SBEC shall make certain specified information regarding educator programs in this state available to the public through the SBEC's Internet website.

The amendments implement the TEC, §§21.041(c) and (d), 21.045, 21.0451, and 21.0452.

§229.2. Definitions.

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

(1) Academic year--If not referring to the academic year of a particular public, private, or charter school or institution of higher education, September 1 through August 31.

(2) ACT®--The college entrance examination from ACT®.

(3) Administrator--For purposes of the surveys and information required by this chapter, an educator whose certification would entitle him or her to be assigned as a principal or assistant principal in Texas, whether or not he or she is currently working in such an assignment.

(4) Alternative certification program--An approved educator preparation program, delivered by entities described in §228.20(a) of this title (relating to Governance of Educator Preparation Programs), specifically designed as an alternative to a traditional undergraduate certification program, for individuals already holding at least a bachelor's degree.

(5) Beginning teacher--For purposes of this chapter, a classroom teacher with less than three years experience.

(6) Campus-based mentor--A certified educator assigned by the campus administrator who has completed mentor training; who guides, assists, and supports the beginning teacher; and who reports the beginning teacher's progress to that teacher's educator preparation program.

(7) Candidate--An individual who has been admitted into an educator preparation program, including an individual who has been accepted on a contingency basis; also referred to as an enrollee or participant.

(8) Certification field--Academic or career and technical content fields, special education fields, specializations, or professional fields in which an entity is approved to offer certification.

(9) Clinical teaching--A minimum 12-week, full-day or 24-week, half-day educator assignment through an educator preparation program at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate; also referred to as student teaching.

(10) Completer--According to the Higher Education Act, "A person who has met all the requirements of a state-approved educator preparation program." The term completer is no longer used to define the class of educator preparation program candidates subject to a determination of certification examination pass rate.

(11) Consecutively measured years--Consecutive years for which a group's performance is measured, excluding years in which the small group exception applies, in accordance with §229.4(g) of this title (relating to Determination of Accreditation Status).

(12) Cooperating teacher--The campus-based mentor teacher for the clinical teacher.

(13) Demographic group--Male and female, as to gender; the aggregate reporting categories established by the Higher Education Act, as to race and ethnicity. Each educator preparation program will assign a candidate to one gender demographic group and at least one Higher Education Act-established race or ethnicity group.

(14) Educator preparation program--An entity that must be approved by the State Board for Educator Certification to recommend candidates in one or more educator certification fields.

(15) Educator preparation program data--Data elements reported to meet requirements under the Texas Education Code, §21.045(b).

(16) Examination--An examination or other test required by statute or any other State Board for Educator Certification rule codified in the Texas Administrative Code, Title 19, Part 7, that governs an individual's admission to an educator preparation program, certification as an educator, continuation as an educator, or advancement as an educator.

(17) Field supervisor--A currently certified educator, hired by the educator preparation program, who preferably has advanced credentials, to observe candidates, monitor their performance, and provide constructive feedback to improve their effectiveness as educators. A campus mentor or cooperating teacher, assigned as required by §228.35(e) of this title (relating to Preparation Program Coursework and/or Training), may not also serve as a field supervisor.

(18) First year in the classroom--For purposes of the Texas Education Code, §21.045(a)(4), and its implementation in this chapter, the first year of employment as a classroom teacher.

(19) GPA--Grade point average.

(20) GRE®--Graduate Record Examinations®.

(21) Higher Education Act--Federal legislation consisting of the Higher Education Act of 1965 (20 United States Code, §1070 et seq.) and its subsequent amendments, which requires reports of educator preparation program performance data.

(22) Institutional report--Educator preparation program data reported to the United States Department of Education and the Texas Education Agency as required under the Higher Education Act.

(23) Internship--A supervised, full-time educator assignment for one full school year at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that may lead to completion of a standard certificate.

(24) Pass rate--For each academic year, the percent of tests passed by candidates who have finished all educator preparation program requirements for coursework; training; and internship, clinical teaching, or practicum by the end of that academic year. For purposes of determining the pass rate, candidates shall not be excluded because the candidate has not been recommended for certification, has not passed a certification examination, or is not considered a "completer" for purposes of the Higher Education Act or other applicable law. The pass rate is based solely on the examinations required to obtain certification in the field(s) for which the candidate serves his or her internship, clinical teaching, or practicum. Examinations not required for certification in that field or fields, whether taken before or after admission to an educator preparation program, are not included. The rate reflects a candidate's success only on the last attempt made on the examination by the end of the academic year in which the candidate finishes the coursework; training; and internship, clinical teaching, or practicum program requirements, and does not reflect any attempts made after that year. The formula for calculation of pass rate is the number of successful (i.e., passing) last attempts made by candidates who have finished the specified educator preparation program requirements divided by the total number of last attempts made by those candidates.

(25) Practicum--A supervised professional educator assignment at a public school accredited by the Texas Education Agency (TEA) or other school approved by the TEA for this purpose that is in a school setting in the particular field for which a professional certificate is sought such as superintendent, principal, school counselor, school librarian, educational diagnostician, reading specialist, and/or master teacher.

(26) SAT®--The college entrance examination from the College Board.

(27) Scaled score--A conversion of a candidate's raw score on an examination or a version of the examination to a common scale that allows for a numerical comparison between candidates.

(28) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's administrative functions and services.

§229.3. Required Submissions of Information, Surveys, and Other Data.

(a) Educator preparation programs (EPPs), EPP candidates, beginning teachers, field supervisors, school principals and administrators, campus mentors, and cooperating teachers shall provide to the Texas Education Agency (TEA) staff all data and information required by this chapter, as set forth in subsection (e) of this section and the Texas Education Code (TEC), §21.045 and §21.0452.

(b) Any individual holding a Texas-issued educator certificate who fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be subject to sanction of his or her certificate, including the placement of restrictions, inscribed or non-inscribed reprimand, suspension, or revocation.

(c) Any Texas public school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions upon its accreditation status be imposed for failure to comply with this section and the TEC, §21.0452.

(d) Any open-enrollment charter school that fails to provide information required by this chapter and the TEC, §21.045 and §21.0452, as set forth in subsection (e) of this section, may be referred to the commissioner of education with a recommendation that sanctions be imposed for failure to comply with this section and the TEC, §21.0452.

(e) All required EPP data for an academic year shall be submitted to the TEA staff annually on September 15 following the end of that academic year. All surveys and information required to be submitted pursuant to this chapter by school administrators and principals shall be submitted by June 15 of any academic year in which the school administrator and principal have had experience with a candidate or beginning teacher who was a participant in an EPP. All surveys and information required to be submitted pursuant to this chapter by EPP candidates shall be submitted by August 1 of each academic year in which it is required.

(f) The following apply to data submissions required by this chapter.

(1) EPPs shall provide data for all candidates as specified in the figure provided in this paragraph.
Figure: 19 TAC §229.3(f)(1)

(2) Participants in an EPP shall complete a survey, in a form approved by the State Board for Educator Certification (SBEC), evaluating the preparation he or she received in the EPP. Completion and submission to the SBEC of the survey is a requirement for issuance of a standard certificate.

(3) Principals or designated administrators in Texas public schools and open-enrollment charter schools shall complete individual teacher performance surveys, in a form to be approved by the SBEC, for each beginning teacher under the supervision of an EPP.

(4) Principals or designated administrators in Texas public schools and open-enrollment charter schools shall complete surveys, in a form to be approved by the SBEC, evaluating the effectiveness of preparation for classroom success for each EPP with which the principals or designated administrators have had experience in the previous year.

§229.4. Determination of Accreditation Status.

(a) The accreditation status of an educator preparation program (EPP) shall be determined at least annually, based on performance standards established in rule by the State Board for Educator Certification (SBEC), with regard to the following EPP accountability performance indicators, disaggregated with respect to gender and ethnicity (according to the aggregate reporting categories for ethnicity established by the Higher Education Act), and other requirements of this chapter:

(1) the pass rate performance standard of certification examinations of EPP candidates is 80% for the academic year;

(2) the results of appraisals of beginning teachers by school administrators, based on an appraisal document and standards that must be independently developed by the Texas Education Agency (TEA) staff and approved by the SBEC;

(3) to the extent practicable, as valid data become available and performance standards are developed, the improvement in student

achievement of students taught by beginning teachers for the first three years following certification; and

(4) the results of data collections establishing EPP compliance with SBEC requirements specified in §228.35(f) of this title (relating to Preparation Program Coursework and/or Training), regarding the frequency, duration, and quality of field supervision of teachers during their internship year. The performance standard is a 95% compliance rate with SBEC requirements as to the frequency, duration, and required documentation of field supervision for each EPP candidate.

(b) An EPP shall be assigned an Accredited status if the EPP has met the accountability performance standards described in subsection (a) of this section and has been approved by the SBEC to prepare, train, and recommend candidates for certification.

(c) An EPP shall be assigned Accredited-Not Rated status upon initial approval to offer educator preparation, until the EPP can be assigned a status based on the performance standards described in subsection (a) of this section. An EPP is fully accredited and may recommend candidates for certification while it is in Accredited-Not Rated status.

(d) Accredited-Warned status. An EPP shall be assigned Accredited-Warned status if the EPP:

(1) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the four performance indicators set forth in subsection (a) of this section in any one year;

(2) fails to meet the standards in any two gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(3) fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for two consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(e) Accredited-Probation status. An EPP shall be assigned Accredited-Probation status if the EPP:

(1) fails to meet the performance standards set by the SBEC for the overall performance of all its candidates on any of the four performance indicators set forth in subsection (a) of this section for two consecutively measured years;

(2) fails to meet the standards in any three gender or ethnicity demographic groups on any of the four performance indicators set forth in subsection (a) of this section in any one year; or

(3) fails to meet the standards for a gender or ethnicity demographic group on any of the four performance indicators set forth in subsection (a) of this section for three consecutively measured years, regardless of whether the deficiency is in the same demographic group or standard.

(f) Not Accredited-Revoked status.

(1) An EPP shall be assigned Not Accredited-Revoked status and its approval to recommend candidates for educator certification revoked if it is assigned Accredited-Probation status for three consecutively measured years.

(2) An EPP may be assigned Not Accredited-Revoked status if the EPP is assigned Accredited-Probation status for two consecutively measured years, and the SBEC determines that revoking the EPP's approval is reasonably necessary to achieve the purposes of the TEC, §21.045 and §21.0451.

(3) An assignment of Not Accredited-Revoked status and revocation of EPP approval to recommend candidates for educator certification is subject to the requirements of notice, record review, and appeal as described in this chapter.

(4) A revocation of an EPP approval shall be effective for a period of two years, after which a program may reapply for approval as a new EPP pursuant to Chapter 228 of this title (relating to Requirements for Educator Preparation Programs).

(5) Upon revocation of EPP approval, the EPP may not admit new candidates for educator certification, but may complete the training of candidates already admitted by the EPP and recommend them for certification. If necessary, TEA staff and other EPPs shall cooperate to assist the previously admitted candidates of the revoked EPP to complete their training.

(g) Small group exception.

(1) For purposes of accreditation status determination, the performance of an EPP candidate group, aggregated or disaggregated, shall be measured against performance standards described in this chapter in any one year in which the number of individuals in the group exceeds 20.

(2) For an EPP candidate group disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year.

(3) For an EPP candidate group not disaggregated by gender, ethnicity, and certification field, where the group contains 20 or fewer individuals, the group's performance shall not be counted for purposes of accreditation status determination for that academic year based on only that year's group performance.

(4) If the preceding year's EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contained 20 or fewer individuals, that group performance shall be combined with the following year's group performance, and if the two-year cumulated group contains more than 20 individuals, then the two-year cumulated group performance must be measured against the standards in that second year.

(5) If the two-year cumulated EPP candidate group, not disaggregated by gender, ethnicity, and certification field, contains 20 or fewer individuals, then the two-year cumulated group performance shall be combined with the following year's group performance. The three-year cumulated group performance must be measured against the standards in that third year, regardless of how small the cumulated number of group members may be.

(6) In any reporting year in which the EPP candidate group, not disaggregated by gender and ethnicity, or in which the EPP candidate group, disaggregated by certification field, does not meet the necessary number of individuals needed to measure against performance standards for that year, any sanction assigned as a result of an accredited-warned or accredited-probation status in a prior year will continue if that candidate group has not met performance standards since being assigned accredited-warned or accredited-probation status. TEA staff may modify the sanction as TEA staff deems necessary based on subsequent performance, even though that performance is not measured against performance standards for a rating.

(h) An EPP that fails to meet a required performance standard shall develop an action plan addressing the deficiencies and describing the steps the program will take to improve the performance of its candidates, especially regarding the performance standard that was not met. TEA staff may prescribe the information that must be included in the

action plan. The action plan must be sent to TEA staff no later than 45 calendar days following notification to the EPP of the failure to meet a performance standard.

(i) To the extent of any conflict, this section controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

§229.5. Accreditation Sanctions and Procedures.

(a) If an educator preparation program (EPP) has been assigned Accredited-Warned or Accredited-Probation status, or if the State Board for Educator Certification (SBEC) determines that additional action is a necessary condition for the continuing approval of an EPP to recommend candidates for educator certification, the SBEC may take any one or more of the following actions, which shall be reviewed by the SBEC at least annually:

(1) require the EPP to obtain technical assistance approved by the Texas Education Agency (TEA) or SBEC;

(2) require the EPP to obtain professional services approved by the TEA or SBEC; and/or

(3) appoint a monitor to participate in the activities of the EPP and report the activities to the TEA or SBEC.

(b) Notwithstanding the accreditation status of an EPP, if the performance of all candidates admitted to an individual certification field offered by an EPP fail to meet any of the standards in §229.4(a) of this title (relating to Determination of Accreditation Status) for three consecutive years, the approval to offer that certification field shall be revoked. Any candidates already admitted for preparation in that field may continue in the EPP and be recommended for certification after program completion, but no new candidates shall be admitted for preparation in that field unless and until the SBEC reinstates approval for the EPP to offer that certification field.

(c) For purposes of determining compliance with subsection (b) of this section, candidate performance in individual certification fields in only the 2012-2013 academic year and subsequent academic years will be considered. To the extent of any conflict, this subsection controls over the requirements in §229.21 of this title (relating to Transitional Provisions).

(d) Performance indicators by gender and ethnic groups shall not be counted for purposes of subsection (b) of this section, relating to performance standards for individual certification fields. If the number of counted performance indicators for a certification field is 20 or fewer, and the performance indicators fail to meet any of the standards in §229.4(a) of this title, those performance indicators shall not count that year, but shall be cumulated and counted in the same manner as provided in §229.4(c) and (d) of this title.

(e) An EPP shall be notified in writing regarding any action proposed to be taken pursuant to this section, or proposed assignment of an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked. The notice shall state the basis on which the proposed action is to be taken or the proposed assignment of the accreditation status is to be made.

(f) All costs associated with providing or requiring technical assistance, professional services, or the appointment of a monitor pursuant to this section shall be paid by the EPP to which the services are provided or required, or its sponsor.

§229.7. Informal Review of Texas Education Agency Recommendations.

(a) Applicability. This section applies only to a notice required under §229.5(e) of this title (relating to Accreditation Sanctions and Procedures) or under §229.6(c) of this title (relating to Continuing Approval) proposing to:

(1) require an educator preparation program (EPP) or a particular field of certification offered by an EPP to obtain technical assistance as provided by the Texas Education Code (TEC), §21.0451(a)(2)(A);

(2) require an EPP or a particular field of certification offered by an EPP to obtain professional services as provided by the TEC, §21.0451(a)(2)(B);

(3) appoint a monitor for an EPP or a particular field of certification offered by an EPP as provided by the TEC, §21.0451(a)(2)(C);

(4) assign an accreditation status of Accredited-Warned, Accredited-Probation, or Not Accredited-Revoked, as specified in §229.4 of this title (relating to Determination of Accreditation Status);

(5) issue a public reprimand or impose conditions on the continuing approval of an EPP to recommend candidates for certification pursuant to §229.5(e) of this title;

(6) revoke the approval of an EPP to recommend candidates for certification in a particular field of certification; or

(7) revoke the approval of an EPP to recommend candidates for certification.

(b) Notice. Notice of a proposed recommendation for an order or change in accreditation status, subject to this section, shall be made as provided by §229.5(e) and §229.6(c) of this title, and this section.

(1) The notice shall attach or make reference to all information on which the proposed recommendation is based.

(A) Information maintained on the Texas Education Agency (TEA) and State Board for Educator Certification (SBEC) websites may be referenced by providing a general citation to the information.

(B) The TEA and SBEC reports previously sent to the EPP may be referenced by providing the title and date of the report.

(C) On request, the TEA shall provide copies of, or reasonable access to, information referenced in the notice.

(2) The notice shall state the procedures for requesting an informal review of the proposed recommendation or change in accreditation status under this section, including the name and department of the TEA staff to whom a request for an informal review may be addressed.

(3) The notice shall set a deadline for requesting an informal review, which shall not be less than 14 calendar days from the date of receipt of the notice. The notice may be delivered by mail, personal delivery, facsimile, or email.

(c) Request. The chief operating officer of the EPP may request, in writing, an informal review under this section.

(1) The request must be properly addressed to the member of the TEA staff identified in the notice under subsection (b)(2) of this section and must be received by TEA staff on or before the deadline specified in subsection (b)(3) of this section.

(2) The request must set out the reasons the EPP believes the recommendation is incorrect, with citations to include supporting evidence. The EPP may submit any written information to TEA as evidence to support its request, without regard to admissibility under the Texas Rules of Evidence. The request for review shall concisely state, in numbered paragraphs:

(A) if alleging the proposed recommendation would violate a statutory provision, the statutory provision violated and the specific facts supporting a conclusion that the statute was violated by the proposed recommendation;

(B) if alleging the proposed recommendation would be in excess of the SBEC's statutory authority, the SBEC's statutory authority and the specific facts supporting a conclusion that the proposed recommendation would be in excess of this authority;

(C) if alleging the proposed recommendation was made through unlawful procedure, the lawful procedure and the specific facts supporting a conclusion that the proposed recommendation was made through unlawful procedure;

(D) if alleging the proposed recommendation is affected by other error of law, the law violated and the specific facts supporting a conclusion that the proposed recommendation violated that law;

(E) if alleging the proposed recommendation is not reasonably supported by a preponderance of the evidence, each finding, inference, or conclusion of the proposed recommendation that is unsupported by a preponderance of the evidence, and the evidence that creates a preponderance against the specific finding, inference, or conclusion at issue;

(F) if alleging the proposed recommendation is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion, each finding, inference, conclusion, or proposed recommendation affected and the specific facts supporting a conclusion that each is so affected;

(G) for each violation, error, or defect alleged under subparagraphs (A) - (F) of this paragraph, the substantial rights of the EPP that are prejudiced by such violation, error, or defect;

(H) a concise statement of the relief sought by the EPP (petitioner); and

(I) the name, mailing address, telephone number, facsimile number, and email address of the petitioner's representative.

(3) Failure to comply with the requirements of this subsection shall result in dismissal of the request for informal review.

(d) No review requested. If the TEA staff does not receive the EPP's request for an informal review by the deadline set in accordance with subsection (b)(3) of this section, the proposed recommendation will become a final recommendation and will proceed in accordance with subsection (f) of this section.

(e) Informal review. In response to a request under subsection (c) of this section, TEA staff will review the materials and documents provided by the EPP and issue a final recommendation. The final recommendation may include changes or additions to the proposed recommendation and such modifications are not subject to another informal review.

(f) Final recommendation.

(1) If the final recommendation proposes revocation of approval of an EPP to recommend candidates for educator certification, within 14 calendar days of receipt of the final recommendation, the EPP may agree in writing to accept the final revocation without further proceedings or may request that TEA staff schedule the matter for a hearing before an administrative law judge at the State Office of Administrative Hearings (SOAH), as provided by §229.8 of this title (relating to Contested Cases for Accreditation Revocation).

(2) If the final recommendation does not propose revocation of approval of an EPP to recommend candidates for educator certification, the final recommendation will be submitted to SBEC for consideration of a final order.

(g) Other law. Texas Government Code, Chapter 2001, and the TEC, §7.057, do not apply to an informal review under this section.

§229.8. Contested Cases for Accreditation Revocation.

(a) This section applies only to a final recommendation issued under §229.5 of this title (relating to Accreditation Sanctions and Procedures) or §229.6 of this title (relating to Continuing Approval) that proposes revocation of approval and closure of an educator preparation program (EPP) and does not apply to a final recommendation proposing the assignment of Accredited-Warned or Accredited-Probation status or ordering any other sanction, including, without limitation, withdrawing approval to offer a specific certification field, public reprimand, imposing conditions upon continuing approval, requiring technical assistance, requiring professional services, or appointing a monitor.

(b) If an EPP declines to sign a final recommendation, or if the EPP fails to respond timely to a notice of a proposed recommendation, Texas Education Agency (TEA) staff may proceed with the filing of a contested case with the State Office of Administrative Hearings (SOAH) in accordance with the contested case procedures set out in §§249.19-249.40 of this title, and Texas Government Code, Chapter 2001. To the extent that a provision of this section conflicts with a rule or practice of the SOAH, this section shall prevail.

(c) Upon the finality of a decision from the State Board for Educator Certification (SBEC) ordering the EPP closed under this subsection in keeping with §249.39 of this title (relating to Final Decisions and Orders), the approval of an EPP to provide educator preparation is:

(1) automatically revoked, void, and of no further force or effect on the effective date of a final decision by the SBEC; and

(2) automatically modified to remove authorization for an individual certification field on the effective date of a final decision by the SBEC.

(d) This section satisfies the hearing requirements of the Texas Education Code, §21.0451(a)(2)(D) and (a)(3).

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

Filed with the Office of the Secretary of State on October 6, 2014.

TRD-201404676
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Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
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For further information, please call: (512) 475-1497

CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES

SUBCHAPTER B. ENFORCEMENT ACTIONS AND GUIDELINES

19 TAC §249.17

The State Board for Educator Certification (SBEC) adopts an amendment to §249.17, concerning disciplinary proceedings, sanctions, and contested cases. The amendment is adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4368) and will not be republished. The section establishes decision-making guidelines. The adopted amendment clarifies that under the SBEC decision-making guidelines, actions that constitute "engaged in" and "solicitation" are distinct grounds for permanent revocation or denial of certification. The adopted amendment also clarifies that fact findings from final orders from other state jurisdictions may also provide the basis for initiating disciplinary proceedings in Texas.

The Texas Education Code, §21.041(b)(7), authorizes the SBEC to adopt rules that provide for disciplinary proceedings for certificate holders. Section 249.17, Decision-Making Guidelines, reflects several provisions of statutory authority that provide a framework and guidance for the Texas Education Agency, administrative law judges, and the SBEC in resolving issues dealing with certification.

Section 249.17(d) deals with when permanent revocation or a certification or denial of an applicant for certification should occur. Specifically, subsection (d)(1) currently calls for permanent revocation or permanent denial of an applicant when the certification holder or applicant "engaged in or solicited any sexual contact or romantic relationship with a student or minor as defined in §249.3 of this title (relating to Definitions)". In a recent contested case hearing, an administrative law judge interpreted "engaged in or solicited" as a single action subject to the same definition rather than as two distinct and separate actions that independently could give rise to permanent revocation or denial.

The adopted amendment to 19 TAC §249.17(d) clarifies the rule to ensure that the actions of "engaged in" and "solicited" are separate and distinct types of conduct that would result in permanent revocation or denial. Current paragraphs (2) - (6) were renumbered accordingly.

Section 249.17(e) deals with how SBEC treats findings of fact contained in final orders from other states. The adopted amendment to 19 TAC §249.17(e) clarifies the rule to make clear that the findings of fact contained in an out-of-state order may provide a factual basis for SBEC action.

The adopted amendment has no procedural and reporting implications. Also, the adopted amendment has no locally maintained paperwork requirements.

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

No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the proposed amendment to 19 TAC §249.17 at the September 19, 2014 SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.031(a), which states that the State Board for Educator Certification (SBEC) shall regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(7), which requires the State Board for Educator Certification (SBEC) to propose rules that provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by the Texas Government Code, Chapter 2001; §21.058(a), (b), and (d), which provide for the revocation of educator certificates based on conviction of certain offenses; and §21.060, which allows the SBEC to suspend or revoke educator certificates based on conviction for certain offenses related to the duties and responsibilities of the education profession; and the Texas Occupations Code, §53.021(a), which provides that a licensing agency may suspend, revoke, or deny a license to a person convicted of an offense related to the duties and responsibilities of the education profession and certain other offenses.

The adopted amendment implements the TEC, §§21.031(a); 21.041(b)(4) and (7); 21.058(a), (b), and (d); and 21.060; and the Texas Occupations Code, §53.021(a).

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

Filed with the Office of the Secretary of State on October 7, 2014.

TRD-201404678
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Effective date: October 27, 2014
Proposal publication date: June 6, 2014
For further information, please call: (512) 475-1497

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CHAPTER 250. ADMINISTRATION
SUBCHAPTER B. RULEMAKING PROCEDURES

19 TAC §250.20

The State Board for Educator Certification (SBEC) adopts an amendment to §250.20, concerning rulemaking procedures. The amendment is adopted without changes to the proposed text as published in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4370) and will not be republished. The SBEC rule provides the process for petitioning the SBEC for the adoption, amendment, or repeal of an SBEC rule in the Texas Administrative Code. The Texas Government Code (TEC), §2001.021, requires that a state agency by rule prescribe the form for a petition and the procedures for its submission, consideration, and disposition.

The adopted amendment to 19 TAC §250.20 updates the rule to clarify the Texas Education Agency (TEA) as TEA staff. In addition, Figure: 19 TAC §250.20(a) was updated to reflect the name of the office to which the form should be mailed. The adopted amendment results from the SBEC's rule review of 19 TAC Chapter 250 conducted in accordance with Texas Government Code, §2001.039.

The adopted amendment has no additional procedural or reporting implications. Also, the adopted amendment has no locally maintained paperwork requirements.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility anal-

ysis, specified in Texas Government Code, §2006.002, is required.

No comments were received regarding the proposed amendment.

The State Board of Education (SBOE) took no action on the review of the proposed amendment to 19 TAC §250.20 at the September 19, 2014, SBOE meeting.

The amendment is adopted under the Texas Education Code (TEC), §21.035, which states that the Texas Education Agency shall provide the board's administrative functions and services; §21.041(b)(1), which requires the State Board for Educator Certification to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; and Texas Government Code, §2001.021, which authorizes a state agency to prescribe by rule the form for a petition and the procedure for its submission, consideration, and disposition.

The adopted amendment implements the TEC, §21.035 and §21.041(b)(1), and Texas Government Code, §2001.021.

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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Cristina De La Fuente-Valadez
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 193. STANDING DELEGATION ORDERS

22 TAC §193.17

(Editor's Note: The Texas Medical Board adopted §193.17 in the November 1, 2013, issue of the Texas Register (38 TexReg 7711). The section was adopted as part of new Chapter 193, Standing Delegation Orders, which replaced repealed Chapter 193. The Texas Medical Board is readopting §193.17 with a revised reasoned justification; however, the text of the section and the original effective date are unchanged.)

On October 18, 2013, the Texas Medical Board ("Board") adopted §193.17, concerning Nonsurgical Medical Cosmetic Procedures, to be effective on November 7, 2013. The Notice of Adoption, a summary of the comments received, Board responses to such comments, and §193.17 were filed with the Secretary of State on October 18, 2013, and published in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7711).

Subsequently, the rule was challenged in District Court by the Texas Association of Aesthetic Nurses who contended that §193.17 and its reasoned justification contradicted one another. On June 16, 2014, the 126th Judicial District Court in Travis County, Texas, under Cause No. D-1-GN-13-003928, *Texas Association of Aesthetic Nurses, et al vs. Texas Medical Board and Mari Robinson, Executive Director,* heard evidence and argument regarding plaintiff's Request for Declaratory Judgment and Permanent Injunctive Relief as it related to §193.17. On July 1, 2014, Judge Yelenosky found that §193.17 lacked reasoned justification. The court ordered that the rule was invalid and remanded §193.17 to the Texas Medical Board for further proceedings, specifically, to satisfy the reasoned justification standards.

Based on the District Court's ruling, the Board revised the reasoned justification for §193.17 and submitted it to the Board for consideration at the August 29, 2014, Board meeting. The Board approved the revised reasoned justification for §193.17 at the August 29, 2014, Board meeting. At the August 29, 2014, Board meeting, the Board also readopted §193.17, without changes from the version previously adopted by the Board on October 18, 2013.

Section 193.17 - Nonsurgical Medical Cosmetic Procedures

New §193.17, relating to Nonsurgical Medical Cosmetic Procedures, is added to describe the duties and responsibilities of a physician who performs or who delegates the performance of nonsurgical medical cosmetic procedures.

The Board has determined that the public benefit anticipated as a result of enforcing this section will be to encourage the more effective utilization of the skills of physicians by establishing guidelines for the delegation of health care tasks to qualified non-physicians providing services under reasonable physician control and supervision where such delegation and supervision is consistent with the patient's health and welfare; and to provide guidelines for physicians so that existing legal constraints should not be an unnecessary hindrance to the more effective provision of health care services.

The Board received comments on proposed §193.17 as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 223) from the Texas Association of Aesthetic Nurses (TAAN) and approximately 105 individuals, including an Austin based health law attorney. Those comments and the Board's responses were as follows:

Commenter: Texas Association of Aesthetic Nurses

1. TAAN comments that §193.17 is unnecessary and will cause harm to public.

2. Registered nurses have been performing nonsurgical medical procedures under standing delegation orders from physician-medical directors for years.

3. Standing delegation orders provide physicians sufficient control and supervision over procedures being performed by registered nurses. Registered nurses also have access to medical directors through the phone, email, and text messaging.

4. Registered nurses should be allowed to perform procedures without a physician or mid-level being present at the facility.

5. Subsection (d)(2) creates an unnecessary burden on patients by requiring that a physician or mid-level provider be more involved than is necessary.

6. Subsection (d)(3) which allows "qualified unlicensed personnel" to perform procedures increases the risk of harm to patients.

7. Nurses have extensive training and are answerable to the Texas Board of Nursing.

8. TAAN believes that §193.17 should be changed to require individuals performing such procedures to be licensed.

9. TAAN asks the Board reconsider the rule and change it to allow registered nurses to perform procedures without a physician or mid-level being present at the facility, or alternatively, to require individuals performing nonsurgical cosmetic procedures under a physician's supervision to be licensed.

Individual Comments: The Board received approximately 105 comments from individuals, all opposed to the adoption of proposed §193.17. The comments opposing proposed §193.17 reflected several common objections, which are set out and summarized below. Several comments did not set forth a basis for opposition but rather simply stated the commenter's opposition to the adoption of §193.17.

1. Increased Cost. Several commenters voiced concerns that the rule would result in increased costs for cosmetic treatment, including botox and fillers. None of the commenters articulated reasons why or how the proposed rule would increase costs, but some seemed to suggest that the proposed rule, being a form of regulation, would automatically increase costs.

2. Infringement on Personal Freedoms. Many commenters stated that they were opposed to the proposed rule because it infringed on their personal freedoms. Several commenters stated that the rule would take away their freedom to see the cosmetic procedure provider of their choice.

3. Unnecessary Regulation by the Government. Several commenters stated they were opposed to the proposed rule because it represented unnecessary regulation by the government and the imposition of more government red tape.

4. RNs are Qualified. Many commenters stated that RNs are qualified to perform injections and the injections do not need to be done by PAs or Physicians. Some commenters stated their opinion that RNs were better at performing cosmetic injections than physicians and that they preferred getting injections from RNs.

5. Rule will Limit Choice of Injectors and Treatment Plans. Several commenters suggested that the result of the proposed rule would be to limit consumers' choice of injectors and treatment plans.

6. Proposed Rule will Interfere with Convenience. Several commenters stated that the current system is convenient for them and expressed their concerns that the rules would interfere with this current convenience and limit their treatment options.

7. Proposed Rule will Force Consumers to go the Black Market. Several comments expressed the opinion that the rules will result in increased costs which will force consumers who need cosmetic treatment to utilize "black market" services staffed by non-medical personnel.

8. Physical Examination is Unnecessary. Several commenters opined that the physical examination required under the proposed rules was not necessary for the purpose of providing cosmetic services. Other commenters suggested that they would not be comfortable undergoing a physical examination.

Response to Comments on §193.17

Nonsurgical medical procedures are the practice of medicine and involve risks of complication. The intent of the rule is to enhance and insure patient safety during nonsurgical cosmetic procedures, which are medical procedures with inherent risks. This rule is consistent with both existing federal and state laws related to prescription medicines and prescriptive medical devices. These procedures include the use of prescriptions drugs, all of which are dangerous drugs, and some are controlled substances. Federal law requires a prescription be issued by a physician or approved mid-level provider for controlled substances and dangerous drugs. Botox is a controlled substance with known complications that can result in temporary nerve damage, respiratory distress, impaired speaking or swallowing, and loss of bladder control. The administration of fillers such as Juviderm and Restylane have known complications that include permanent vascular occlusion, necrosis and disfigurement.

Lasers, which are regulated prescriptive medical devices and carry risk of injury to patients, are also utilized in nonsurgical cosmetic procedures. The use of lasers can cause severe burns, permanent scarring and disfigurement.

The rule will enhance public safety by insuring that, in emergency situations involving complications of nonsurgical cosmetic procedures, either a physician or mid-level practitioner will be available. Availability to treat or supervise treatment of the complication requires that a physician or mid-level practitioner be present at the facility or that a physician be available remotely for emergency consultation and, if necessary, an in-person appointment to treat or address the emergency. The requirement to be on-site or remotely available for consultation during an emergency is consistent with Chapter 193 of the Board Rules and Chapter 157 of the Medical Practice Act requiring a delegating physician to have a written plan in case of patient emergencies arising from complications of nonsurgical cosmetic procedures.

Consistent with Chapter 157 of the Medical Practice Act, and as allowed under the scope of a licensure, a patient history and a physical may be performed by a registered nurse, but all other activities listed in §193.17(d)(2) are related to formulating a diagnosis and treatment plan and must be performed by a physician or a mid-level practitioner consistent with Board Rule §190.8(1)(L).

Also, consistent with Chapter 157 of the Medical Practice Act, limited types of nonsurgical cosmetic procedures may be delegated to properly trained, qualified unlicensed individuals. Specifically, certain procedures involving prescriptive medical devices, such as laser treatment may be performed by individuals who are not licensed, but such individuals must be certified or properly registered as users who are appropriately trained in the procedure. This rule does not expand the scope of delegation to allow unlicensed individuals to administer controlled substances and/or dangerous drugs, as these activities must be performed in compliance with Chapter 157 of the Medical Practice Act and Chapter 193 of the Board Rules, as well as other state law related to the delivery medical/healthcare services including, but not limited to, regulations promulgated by the Texas Board of Nursing and Department of State Health Services.

For these reasons, the rule will protect public safety by insuring that the individuals providing nonsurgical cosmetic procedures are properly certified, registered, or licensed, as applicable. Further, the rule insures the individuals are properly trained, supervised, and acting within permissible scope of their license, certification, or registration, as applicable, and practice in accordance with state law. The rule continues to recognize that making a diagnosis and treatment plan is the practice of medicine and can only be carried out by a physician or mid-level practitioner. How-

ever, once a diagnosis and treatment plan has been made, the rule allows the performance of nonsurgical cosmetic procedures by qualified unlicensed and licensed individuals and mid-level practitioners, pursuant to proper delegation and supervision.

In addition, the rule insures patient safety in the event of an emergency by requiring that any emergency event be addressed by a physician or mid-level practitioner on-site or by a physician consulting remotely. Further, the physician must be available to conduct an emergency appointment in the event that the physician finds that the standard of care requires such. The rule is designed to protect patient health and safety, while allowing enhanced access to non-surgical cosmetic procedures, through proper supervision and delegation to mid-level practitioners, and certain qualified unlicensed and licensed individuals as allowed under existing federal and state law.

For these reasons, the Board does not believe that any changes should be made to §193.17, as published, and re-adopts §193.17 as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5996) without changes. Re-adopted §193.17 will not be republished.

Section 193.17 is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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

Filed with the Office of the Secretary of State on October 13, 2014.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER A. GENERAL RULES

34 TAC §3.5

The Comptroller of Public Accounts adopts an amendment to §3.5, relating to waiver of penalty or interest, with changes to the proposed text as published in the May 2, 2014, issue of the *Texas Register* (39 TexReg 3565).

New subsection (a) is added to reflect longstanding policy that Tax Code, §111.103 gives the comptroller discretion to settle penalty or interest on a tax liability if the comptroller determines that the taxpayer exercised reasonable diligence to comply with the tax laws of this state. See, for example, Comptroller's Decision Nos. 20,181 (1987) and 33,765 (1995). Subsequent subsections are re-lettered, and cross-references in the section are updated to reflect this change.

Re-lettered subsection (b), which addresses the procedure for requesting a waiver of penalty or interest in the context of an audit, is amended to include a list of the factors that the Audit Division will consider when evaluating a waiver request. This information was previously provided at subsection (c), which is now re-lettered as subsection (d). This information is moved to improve the clarity of the subsection. Minor changes are made to the list of factors the Audit Division will consider to reflect current practice and procedure. Existing paragraphs of the subsection are re-numbered to reflect this change. The subsection is also amended to change references to the audit manager to Audit Division, to conform with current procedures. In one instance, the term audit manager is deleted and not replaced because it was unnecessary to the meaning of the sentence. Subsection (b)(2) is amended to clarify the timing of notice to a taxpayer as to whether any penalty or interest will be waived. Taxpayers will be informed at the conclusion of an audit and during the exit conference. Subsection (b)(6) is amended to identify an independent audit review conference as another opportunity for a taxpayer whose waiver request is denied to raise the issue.

Re-lettered subsection (c), formerly subsection (b), addresses the procedure for requesting a waiver of penalty or interest or both from the Revenue Accounting Division. Existing paragraphs in this subsection are reorganized to improve the clarity of the section. In addition, paragraph (1) is amended to clarify that the Revenue Accounting Division has the initial authority to waive penalty or interest or both on all return and report liabilities, not only on late returns and reports. Paragraph (2) is amended to identify the number of periods that may be included on a single waiver request. The Revenue Accounting Division has seen a sharp increase in waiver requests following the enactment of Senate Bill 1, 82nd Legislature, 1st Called Session, 2011, which amended Tax Code, §§151.703, 152.045, 152.047, 156.202, 162.401, 171.362, and 183.024, and Health and Safety Code, §771.0712, to impose a $50 penalty on all late-filed reports. The changes are necessary to ensure the efficient administration of this section. On a prospective basis from the effective date of this section, a single waiver request may address the penalty or interest or both imposed on one annual return or report period, two quarterly returns or report periods, or six monthly returns or report periods.

Paragraphs (3) - (5) of re-lettered subsection (c) are amended to memorialize longstanding agency policy allowing partial waivers. In addition, amendments are made to the list of factors identified in paragraph (3) that the Revenue Accounting Division will consider in determining whether a taxpayer has exercised reasonable diligence to comply with the tax law of this state. First, this paragraph is amended to explain that the Revenue Accounting Division will consider whether penalty has previously been waived for any tax type and why those requests were granted, not only the tax type for which the request at issue has been made. The list is also amended to include additional factors that will be considered, such as the size and sophistication of the taxpayer, whether advanced collection actions were initiated on the liability with respect to which the waiver is requested, and whether multiple liabilities are included in the waiver request. Finally, paragraph (8) is deleted as the contents of this paragraph are moved to re-lettered subsection (d).

Re-lettered subsection (d) is revised. As previously noted, the specific list of factors that the Audit Division will consider in evaluating a waiver request is moved to re-lettered subsection (b). This subsection is changed from the version proposed in the *Texas Register* to explain the factors that an independent audit reviewer will consider when evaluating a penalty waiver determination. The subsection is further amended to explain the factors that the comptroller will consider in a contested case when evaluating a waiver determination made by the Audit or Revenue Accounting Divisions. This subsection is also amended for clarity and readability.

Re-lettered subsection (e) is revised to include an independent audit review conference as another instance when the factors listed in that subsection must be considered in reviewing an interest waiver request. Paragraph (2) is amended to include a reference to §3.10(c) of this title (relating to Taxpayer Bill of Rights), regarding the comptroller's detrimental reliance policy. The paragraph was reworded for clarity.

Comments were received from Ms. Eleanor Kim, Tax Counsel, DuCharme, McMillen & Associates, Inc., Austin, Texas, concerning the addition of subsection (a), proposed changes to non-audit factors in subsection (b), proposed changes to audit factors in subsection (c), and clarifying changes made to the title and throughout this section. After careful consideration, it was determined that subsection (a) is necessary to this section as it provides the context for subsequent subsections and ties the comptroller's authority to settle penalty and interest, under Tax Code, §111.103, to the provisions included in this section. Additional language is added to this new subsection, however, stating that the comptroller will use the factors set out in subsections (b) and (c) to determine whether a taxpayer has exercised reasonable diligence to comply with the tax laws of this state. Along with the adoption of this amended section, the comptroller intends to supersede any older letters and Comptroller's Decisions which could otherwise cause confusion about current policy on penalty and interest waivers.

Ms. Kim raised concerns regarding the proposed changes to the non-audit penalty waiver factors reflected in subsection (c)(3)(C) and (F), specifically the addition of "for any tax type" to the non-audit factor, "whether penalty has been waived on other occasions," and the addition of "size and sophistication of the taxpayer." After careful review, it was determined that the proposed factors will be adopted without change. It is appropriate to consider whether penalty has been waived for other tax types as evidence of reasonable diligence because taxpayers must exercise reasonable diligence in complying with all tax laws. In addition, the comptroller has long held that reasonable diligence in complying with tax laws must be determined relative to the taxpayer's size and sophistication. See, for example, Comptroller's Decision Nos. 42,406 (2003), 40,034 (2001), and 38,716 (2000). Finally, these amendments to the non-audit penalty waiver factors represent just two of many factors to be considered and both are consistent with existing audit penalty waiver factors. See subsection (b)(3)(E) and (J).

Ms. Kim also raised concerns regarding the proposed audit penalty waiver factor set out in subsection (b)(3)(I), "the taxpayer's efforts to comply with the recordkeeping requirement of the state, such as maintaining an accrual system for taxable purchases," contending that it is confusing and redundant in light of the existing factor, "completeness of the taxpayer's records," found in subsection (b)(3)(H). This factor will be adopted without change because it merely incorporates existing policy into the section to provide taxpayers additional guidance and notice as to the factors that will be considered for an audit penalty waiver. This factor is currently included on the standard penalty and interest waiver worksheet completed in all audits. The adoption of subsection (b)(3)(I) also serves to settle possible conflicts between older and more recent Comptroller's Decisions. See, for example, Comptroller's Decision Nos. 41,492 (2002), 34,914 (1996), and 33,169 (1995) (demonstrating that this factor has been considered independently of "the completeness of the taxpayer's records") and Comptroller's Decision Nos. 31,750 (1994) and 31,760 (1994) (in which the factors are not clearly considered independently). To the extent previous decisions and letters conflict with the current policy and this section, they will be superseded.

Finally, Ms. Kim commented that it was unnecessary and would negatively impact both taxpayers and the agency to revise "waiver of penalty or interest" to "waiver of penalty and interest." Although Tax Code, §111.103 is entitled "Settlement of Penalty and Interest Only," the text of the section describes a waiver of penalty or interest. After careful review, the comptroller agrees to retain the current disjunctive phrasing, "penalty or interest," in keeping with the court's decision in Upjohn Co. v. Rylander, 38 S.W.3d 600, 611 (Tex. App. -- Austin 2000, pet. denied). In addition, subsections (b)(12), (c)(1), and (2) are revised to replace the phrase "penalty and interest" with the phrase "penalty or interest or both."

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendments implement Tax Code, §111.103 (Settlement of Penalty and Interest Only).

§3.5. Waiver of Penalty or Interest.

(a) The comptroller has discretion to settle penalty or interest on a tax liability if the comptroller determines that the taxpayer exercised reasonable diligence to comply with the tax laws of this state. In determining whether a taxpayer has exercised reasonable diligence to comply with the tax laws of this state, the Audit Division and Revenue Accounting Division will consider the factors set out in subsections (b) and (c), respectively.

(b) Procedure for requesting waiver, audits.

(1) Penalty or interest on an audit liability may be waived if the taxpayer exercised reasonable diligence to comply with the tax laws of this state. A request to waive penalty or interest will be presumed in all cases governed by this subsection.

(2) The comptroller has delegated to the Audit Division the initial authority to waive penalty or interest or both in appropriate cases. At the conclusion of an audit and during the exit conference, the taxpayer will be told whether any penalty or interest will be waived. At this conference the taxpayer may request that the Audit Division reconsider the decision on penalty or interest waiver.

(3) When reviewing a request for penalty waiver, the Audit Division will consider the following factors:

(A) the taxpayer's audit history, including, but not limited to, the errors identified in prior audits;

(B) the tax issues involved;

(C) whether a change in comptroller policy occurred during the audit period;

(D) whether changes in the law took effect during the audit period;

(E) the size and sophistication of the taxpayer;

(F) whether tax was collected but not remitted;

(G) whether returns were timely filed;

(H) the completeness of the taxpayer's records;

(I) the taxpayer's efforts to comply with the recordkeeping requirements of this state, such as maintaining an accrual system for taxable purchases;

(J) delinquencies in other taxes;

(K) reliance on advice provided by the comptroller's office pursuant to §3.10(c) of this title (relating to Taxpayer Bill of Rights); and

(L) the error rate in the current audit.

(4) When reviewing a request for interest waiver, the Audit Division will consider the factors enumerated in subsection (e) of this section.

(5) The taxpayer will be advised of the acceptance or rejection of the request for waiver of penalty or interest in the audit cover letter sent with the copy of the audit schedules.

(6) If a taxpayer's request for waiver is denied at the audit level, the taxpayer may raise the issue as a contested case matter during either a refund or redetermination hearing, or during an independent audit review conference under §3.10(e)(4) of this title.

(c) Procedure for requesting waiver, non-audit.

(1) The comptroller has delegated to the Revenue Accounting Division the initial authority to waive penalty or interest or both on return and report liabilities. Penalty or interest on a non-audit liability may be waived if the taxpayer exercised reasonable diligence to comply with the tax laws of this state.

(2) A written request stating the reasons penalty or interest or both should be waived must be sent to the comptroller's Revenue Accounting Division accompanied by supporting documentation. A single waiver request may address the penalty or interest or both imposed on one annual return or report period, two quarterly returns or report periods, or six monthly returns or report periods. The comptroller may require the production of any additional documentation necessary to evaluate a request.

(3) When reviewing a penalty waiver request under this subsection, the Revenue Accounting Division will consider the following factors regarding a taxpayer's account and will inform the taxpayer of the division's decision to accept or reject part or all of the penalty waiver request:

(A) whether the taxpayer is current in the filing of all returns;

(B) whether the taxpayer is current in the payment of all taxes and fees due the state;

(C) whether penalty has been waived on other occasions for any tax type;

(D) why any previous penalty waiver requests were granted or denied;

(E) whether the taxpayer has a good record of timely filing and paying past returns;

(F) the size and sophistication of the taxpayer;

(G) whether advanced collection actions were initiated on the liability with respect to which the waiver is requested;

(H) whether multiple liabilities are included in the waiver request; and

(I) whether the taxpayer has taken the necessary steps to correct the problem for future filings.

(4) When reviewing an interest waiver request under this subsection, the Revenue Accounting Division will consider the factors enumerated in subsection (e) of this section and will inform the taxpayer of the division's decision to accept or reject all or part of the interest waiver request.

(5) A taxpayer may request an administrative appeal with the Revenue Accounting Division of a denial of all or part of a waiver request within ten calendar days from the date of written notification of the denial. Such a request for an administrative appeal must be in writing and must state the reasons the taxpayer disagrees with the denial of the waiver. New or additional documentation upon which the taxpayer relies for support should be submitted with the written request for an administrative appeal.

(6) The taxpayer will be sent written notification from the Revenue Accounting Division of the disposition of the appeal within 30 days of either the comptroller's receipt of the request for an appeal or the comptroller's receipt of all additional information requested from the taxpayer in relation to the appeal.

(7) If a taxpayer's request for waiver is denied by the Revenue Accounting Division, the taxpayer may raise the issue as a contested case matter during either a refund or redetermination hearing.

(d) Review of penalty waiver. When reviewing the Audit Division's denial of a penalty waiver request during an independent audit review conference under §3.10(e)(4) of this title, the independent audit reviewer will consider the factors enumerated in subsection (b)(3) of this section. When reviewing the Audit Division's denial of a penalty waiver request in a contested case, the comptroller will consider the factors enumerated in subsection (b)(3) of this section. When reviewing the Revenue Accounting Division's denial of a penalty waiver request in a contested case, the comptroller will consider the factors enumerated in subsection (c)(3) of this section.

(e) Interest. When reviewing an interest waiver request under subsection (b) or (c) of this section, in a contested case, or during an independent audit review conference under §3.10(e)(4) of this title, the following factors regarding a taxpayer's account will be considered:

(1) undue delay caused by comptroller personnel;

(2) reliance on advice provided by the comptroller's office pursuant to §3.10(c) of this title; and

(3) natural disasters.

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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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. ADMINISTRATIVE RESPONSIBILITIES OF STATE FACILITIES

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §3.101, concerning definitions; and new §3.701, concerning electronic monitoring; §3.702, concerning information regarding electronic monitoring; §3.703, concerning request to conduct electronic monitoring; §3.704, concerning annual consent of other individuals; §3.705, concerning capacity to request or consent to electronic monitoring; §3.706, concerning conducting electronic monitoring; §3.707, concerning required facility notice and accommodation; and §3.708, concerning reporting abuse, neglect, or exploitation, in new Subchapter G, Electronic Monitoring, of Chapter 3, Administrative Responsibilities of State Facilities. New §§3.701, 3.702, 3.703, 3.704, and 3.706 are adopted with changes to the proposed text published in the April 11, 2014, issue of the *Texas Register* (39 TexReg 2823). The amendment to §3.101 and new §§3.705, 3.707, and 3.708 are adopted without changes to the proposed text.

The purpose of the amendments and new sections is to implement Senate Bill (S.B.) 33, 83rd Legislature, Regular Session, 2013, which added Chapter 555, Subchapter E, to the Texas Health and Safety Code (THSC). Subchapter E requires a state supported living center (SSLC) and the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center to permit an individual or an individual's legally authorized representative (LAR) to monitor the individual's bedroom through the use of electronic monitoring. The rules describe requirements for requesting, consenting to, and conducting electronic monitoring in a facility. The rules require an individual or LAR who wants to install an electronic monitoring device to complete a DADS request form and give the form to the director of the facility in which the individual resides. Also, the individual or the LAR must obtain permission from each roommate or roommate's LAR using a DADS consent form, which includes a release of the facility from any civil liability for violation of the person's privacy rights in connection with the use of the electronic monitoring device (EMD). In addition, a person who conducts electronic monitoring must post and maintain a conspicuous notice at the entrance of the bedroom in which monitoring is being conducted and must pay for all costs associated with conducting the monitoring, other than the cost of electricity. The rules also require an individual or an individual's LAR to complete and sign a form that contains information about electronic monitoring; require a facility to post a notice regarding electronic monitoring and make reasonable physical accommodations for electronic monitoring; and require a person to report abuse, neglect, or exploitation that is suspected or known from viewing or listening to a tape or recording obtained from electronic monitoring to the Department of Family and Protective Services (DFPS) and to the director of the facility in which the alleged abuse, neglect or exploitation occurred.

A change was made to §3.702(a)(1) to set December 1, 2014, as the date after which the DADS *Information Regarding Electronic Monitoring* form must be completed and signed as part of the admission process.

A change was made to §3.702(a)(2) to allow a facility until December 1, 2015 to have an individual or individual's LAR complete and sign the DADS *Information Regarding Electronic Monitoring* form, for an individual admitted to a facility before December 1, 2014.

A change was made to §3.704(b)(2) and (3) to use wording from THSC §555.156(c)(2) and (3) and to clarify that the paragraphs apply to an individual who has been judicially declared to lack the capacity required to consent to electronic monitoring; a specific declaration regarding electronic monitoring is not required.

DADS received written comments from Disability Rights Texas. A summary of the comments and the responses follows.

Comment: The commenter requested adding the term "actively involved person" to the definitions in §3.101 because many rules in the Texas Administrative Code (TAC) use this term.

Response: The agency did not make the requested revision to §3.101 because the term "actively involved person" is not used in Chapter 3 of Title 40 and the definitions in §3.101 apply to Chapter 3.

Comment: Regarding §3.101(16), the commenter suggested revising the definition of "covert electronic monitoring" by adding the word "installed" after the phrase "electronic monitoring that is." The commenter stated that S.B. 33 relates to installed devices, not uninstalled devices, such as cell phones, cameras, and audio devices used in team meetings.

Response: The definition is consistent with the description of covert placement and use of an EMD in THSC §555.153(a). The definition of "electronic monitoring device" in THSC §555.151(2) states that it "includes" certain items "installed in a resident's room," but, according to the Code Construction Act, Texas Government Code, Chapter 311, the word "includes" is a term of enlargement and not of limitation or exclusive enumeration, and use of the term does not create a presumption that components not expressed are excluded. Therefore, the list of items in the definition of "electronic monitoring device" is not exhaustive. In addition, there are references in THSC Chapter 555, Subchapter E, to an EMD being "placed" in a resident's room and, therefore, the agency does not believe that a device must be "installed" to constitute an EMD. The agency also notes that the definition of "electronic monitoring" applies only to activity in an individual's bedroom, so it will not generally apply to team meetings. Finally, the agency believes the definition protects an individual's privacy by not limiting the definition of covert electronic monitoring to monitoring that uses an "installed" device. The agency did not make the suggested revision.

Comment: The commenter requested revising the definition of "electronic monitoring device (EMD)" in §3.101(26) by adding the word "installed" before the phrases "video surveillance camera" and "audio device designed to acquire communication or other sounds."

Response: As explained in the response to the previous comment, the agency does not believe the list of devices in THSC §555.151(2), which describes them as being "installed in a resident's room" to be an exhaustive list of EMDs. Specifically, the agency does not believe a device must be "installed," to the extent that term implies they be affixed to an object in a bedroom,

to constitute an EMD. Some EMDs do not require any kind of installation, such as a voice-activated listening device used for audio surveillance. In addition, technological advances in electronic monitoring likely will result in more types of EMDs that do not require installation. The agency did not make a change in response to the comment.

Comment: The commenter suggested revising §3.701(c) to prohibit the discharge of an individual from a facility when an individual, or a person on the individual's behalf, conducts "authorized electronic monitoring." The commenter stated that proposed §3.701(c) covers only the discharge of an individual for "covert electronic monitoring."

Response: The agency agrees that an individual must not be discharged for conducting electronic monitoring in accordance with the rules. However, the agency has revised §3.701(a), rather than §3.701(c), to state that a facility must not discharge an individual for such action. In addition, the agency has revised §3.701(b) to clarify that a facility is prohibited from refusing to admit an individual or from discharging an individual from the facility because the individual or individual's LAR gives consent, refuses to give consent, or withdraws consent for electronic monitoring.

Comment: The commenter inquired whether §3.702 applies to both the common area electronic monitoring as well as electronic monitoring in an individual's bedroom. The commenter stated that if it applies to both, §3.702 needs clarifying.

Response: Section 3.702 only applies to "electronic monitoring," which is defined in §3.101(25) and is limited to monitoring in an individual's bedroom.

Comment: Regarding §3.703(a), the commenter stated that the forms were not provided with the proposed rule making it impossible to know if additional comments are necessary regarding the form.

Response: The agency plans to disseminate, using GovDelivery.com, a draft operational policy governing electronic monitoring, which will include the forms referenced in the new subchapter, for review and comment. The agency will consider comments regarding the policy and forms submitted through that process.

Comment: The commenter suggested adding a provision to §3.703(a) that addresses the assistance that can be provided to an individual or an LAR with filling out the request form, i.e. "If a verbal request is made to conduct electronic monitoring, the interdisciplinary team (IDT) will assist the individual or LAR with obtaining and completing the necessary forms."

Response: The agency agrees that facility staff will provide assistance if an individual makes an oral request to conduct electronic monitoring, but a facility should have flexibility in determining which staff will provide the assistance. The agency declines to make the suggested change.

Comment: Regarding §3.703(b), the commenter stated that if an individual's IDT determines the individual does not have capacity to request electronic monitoring, there should be some ability for the individual to challenge the IDT determination and, at the individual's own cost, obtain an independent evaluation regarding the individual's capacity.

Response: An individual's IDT completes a capacity assessment and documents the results as part of the Rights and Capacity Assessment (RCA) process. The facility should document in the individual support plan an individual's or LAR's objection to the results of a capacity assessment and address an objection in IDT discussions, as appropriate, throughout the RCA process. The agency did not revise the rule in response to the comment.

Comment: The commenter requested removing the word "only" from the beginning of proposed §3.703(b)(1), (2), and (3).

Response: The agency did not make the requested revision. The wording is consistent with THSC §555.155.

Comment: The commenter requested deletion of the phrase "if the individual has been judicially declared to lack capacity to request electronic monitoring" from proposed §3.703(b)(2). The commenter asserts that under the Texas Estates Code, a court does not make any specific findings regarding capacity to consent to electronic monitoring and the rule would require a guardian to amend his or her letters of guardianship to specifically include this finding, which would be cost and time prohibitive. The commenter stated that it should be sufficient to show a lack of capacity if the individual has a guardian of the person or a limited guardian of the person, limiting the individual's ability to make informed decisions.

Response: The agency declines to make the requested change. However, the agency has revised §3.703(b)(2) to use wording from THSC §555.155(b) and to specify that a person need only have been judicially declared to lack capacity to take action such as requesting electronic monitoring, but does not have to specifically be declared to lack capacity to request electronic monitoring. The agency made a similar change to §3.703(b)(3).

Comment: The commenter suggested revising §3.703(b)(3) to add the phrase "if the LAR has been given legal authority to consent to request electronic monitoring" after the phrase "by an LAR." The commenter stated that an LAR is someone who only has legal authority, presumably through an advanced directive or power of attorney and, therefore, the LAR should be required to show that electronic monitoring was contemplated when the documents were drafted.

Response: Section 3.101(39) defines the term "LAR" as a "person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual." Thus, only a person with the requisite legal authority is authorized under §3.703 to request electronic monitoring on an individual's behalf. The agency did not make the suggested change.

Comment: The commenter requested deletion of the word "annually" in the first sentence of §3.704(a) because the law does not require annual consent. The commenter further asserted that obtaining consent annually may be difficult if LARs are not available, thus creating unnecessary delays in the use of electronic monitoring.

Response: The agency declines to delete the word "annually" from §3.704(a). A one-year limit is consistent with applicable Center for Medicare and Medicaid Services regulations governing consent and privacy. The one-year limit is also a reasonable period of time considering the privacy rights involved with electronic monitoring in an individual's bedroom. Unlike in a facility's common areas, an individual should be afforded a reasonable expectation of privacy in the individual's bedroom. Additionally, a one-year limit is consistent with the time limits used with other restrictive practices at facilities, such as with the administration of psychotropic medications.

Comment: The commenter requested removing the word "only" from the beginning of proposed §3.704(b)(1), (2), and (3).

Response: The agency declines to make the requested changes because the wording is consistent with THSC §555.156(c).

Comment: The commenter suggested removing §3.704(c)(3) in its entirety, stating that the law does not require limiting or prohibiting the use of a tape recording. The commenter argued that the law specifically requires a tape recording for DFPS and law enforcement, making this provision contrary to the law.

Response: The agency declines to remove §3.704(c)(3) in its entirety because an individual roommate or LAR on the roommate's behalf has the right to consent or not consent to electronic monitoring in the bedroom, or place a condition on the consent. However, the agency has revised §3.704(a) and (c) and added new §3.704(g) to clarify that a condition on consent must not prevent a person from complying with Subchapter G or other law, including §3.708(a).

Comment: The commenter suggested removing §3.704(c)(4) in its entirety. The commenter asserted that without the ability to review the *Information Regarding Electronic Monitoring* form, it is impossible to accept this provision as the form may limit its use entirely.

Response: The agency declines to remove §3.704(c)(4) entirely because an individual's roommate may consent or not consent to electronic monitoring in the bedroom, or place a condition on the consent. However, the agency has revised §3.704(a) and (c) and added a new subsection (g) to clarify that a condition on a consent must be stated on the consent form and must not prevent a person from complying with Subchapter G or other law, including §3.708(a).

Comment: The commenter objected to the language in §3.704(d) stating that a facility should not move an individual into a bedroom with electronic monitoring before first determining if the individual or individual's LAR will consent to the electronic monitoring and whether the individual has capacity to consent. The commenter stated that moving an individual into a bedroom before making these determinations could create problems with additional bedroom moves afterwards. The commenter further suggested that if the individual or individual's LAR does not consent to electronic monitoring, a facility should use its best efforts to find another bedroom for the individual to move into.

Response: The agency disagrees that a revision to §3.704(d) is needed because it is consistent with THSC §555.156(f). THSC §555.156(f) and §3.704(d) address when a facility does not receive the required consent or refusal documentation before an individual is moved into a bedroom. Under THSC §555.157(i) and §3.703(c), a facility may, but is not required to, move an individual to a different bedroom to accommodate a request to conduct electronic monitoring. A facility must have flexibility to determine which bedroom to move an individual into based upon a variety of factors, including the needs and desires of the moving individual and other individuals residing at the facility, the compatibility of roommates, and the availability of bedrooms.

Comment: The commenter suggested that a new subsection be added to §3.706 stating that if the director has determined that the form is not properly completed, that the form must be returned to the IDT to help the individual or individual's LAR properly complete the form.

Response: The agency declines to make the suggested change because the commenter's suggested wording is too prescriptive. However, the agency has amended §3.706(a) to require a facility to notify a person who improperly completes a form and describe the deficiencies that need to be addressed to complete the form.

Comment: The commenter requested deleting §3.706(c)(1), which requires a person conducting electronic monitoring to ensure that the electronic monitoring be conducted in plain view. The commenter stated that the law does not require electronic monitoring to be in plain view. The commenter also contends that if there is a conspicuous notice on the entrance to the bedroom indicating the electronic monitoring is being conducted, anyone entering the room should be aware of the monitoring.

Response: The agency disagrees and declines to delete §3.706(c)(1). THSC §555.157(h) authorizes facilities to require a person to conduct electronic monitoring in plain view. For consistency, §3.706(c)(1) requires persons at all facilities to ensure that electronic monitoring is conducted in plain view. Also, requiring all electronic monitoring be conducted in plain view will help protect individual rights and privacy. The individual or individuals who live in a bedroom in which electronic monitoring is being conducted must have the opportunity to communicate, associate, and meet privately in the bedroom with other individuals. In addition, other individuals residing at the facility may enter a bedroom being monitoring by an EMD and may not understand the notice required to be posted at the bedroom's entrance.

Comment: The commenter suggested that §3.706(c)(2) be amended to provide more information and guidelines about what "safe" means and what are the applicable safety codes and laws.

Response: The agency declines to make the requested change. THSC §555.157(g) authorizes facilities to require an EMD be installed in a manner that is safe for individuals, employees, or visitors who may be moving about the bedroom. The meaning of "safe" is an individualized, case-by-case determination that may differ based upon the specific circumstances involved. Moreover, the agency does not want to limit the applicable safety codes and laws, which may change over time, by specifically referencing them in rule.

Comment: The commenter requested the deletion of §3.706(c)(4) and (5), claiming that these rule provisions are not required by law and are not necessary.

Response: The agency declines to delete §3.706(c)(4) and (5). THSC §555.159(b) prohibits a court or administrative agency from admitting into evidence a tape or recording created through the use of covert or authorized electronic monitoring or take or authorize action based on the tape or recording unless: (1) a video tape or recording shows the time and date that the events acquired on the tape or recording occurred; and (2) the contents of the tape or recording have not been edited or artificially enhanced. The appropriate person to ensure that the tape or recording can be used by a court or administrative agency is the person conducting the electronic monitoring. The agency has added the word "video" to §3.706(c)(4) to clarify that it applies only to a video tape or recording.

Comment: The commenter suggested changing the time a person must report suspected or known abuse, neglect, or exploitation to DFPS and the facility director from no more than 1 hour to no more than 24 hours after the person knows or suspects that abuse, neglect, or exploitation of an individual has occurred. The commenter asserts that people may not have access to a phone or computer to make a DFPS complaint within an hour.

Response: The agency declines to make the suggested change because the proposed rule is consistent with applicable state law. THSC §555.158 requires a report of abuse, neglect or exploitation to be made in accordance with §48.051 of the Texas Human Resources Code. Section 48.051 requires a person having cause to believe that an elderly or disabled person receiving services at a state supported living center is in a state of abuse, neglect, or exploitation to report the information immediately to DFPS. DFPS rules at 40 TAC §711.201 require a report to be made immediately, but no later than one hour of acquiring knowledge or suspicion.

SUBCHAPTER A. DEFINITIONS

40 TAC §3.101

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; 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid 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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SUBCHAPTER G. ELECTRONIC MONITORING

40 TAC §§3.701 - 3.708

The new sections are 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; 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; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

§3.701. Electronic Monitoring.

(a) A facility must permit an individual or an individual's LAR to conduct electronic monitoring if the individual or LAR complies with the requirements for conducting electronic monitoring in this subchapter. A facility must not discharge an individual because the individual or the individual's LAR conducts electronic monitoring in accordance with this subchapter.

(b) A facility must not refuse to admit an individual and must not discharge an individual from the facility because the individual or individual's LAR:

(1) requests authorization to conduct electronic monitoring;

(2) refuses to give consent or gives consent to conduct electronic monitoring requested by another individual or the other individual's LAR; or

(3) withdraws consent for another individual or the individual's LAR to conduct electronic monitoring.

(c) A facility must not discharge an individual because covert electronic monitoring is conducted by or on behalf of an individual.

§3.702. Information Regarding Electronic Monitoring.

(a) An individual or an individual's LAR must complete and sign the DADS *Information Regarding Electronic Monitoring* form.

(1) For an individual admitted to a facility on or after December 1, 2014, the individual or individual's LAR must complete and sign the form as part of the admission process.

(2) For an individual admitted to a facility before December 1, 2014, the individual or individual's LAR must complete and sign the form by December 1, 2015.

(b) A facility must maintain a copy of a completed and signed DADS *Information Regarding Electronic Monitoring* form in the active portion of an individual's clinical record.

§3.703. Request to Conduct Electronic Monitoring.

(a) To conduct electronic monitoring, an individual or an individual's LAR must request authorization to do so by using the DADS *Request for Authorized Electronic Monitoring* form. The form must be signed and dated by the person described in subsection (b) of this section and given to the director of the facility in which the individual resides.

(b) A request to conduct electronic monitoring may be made:

(1) only by an individual, if the individual's IDT determines that the individual has capacity to request electronic monitoring in accordance with §3.705 of this subchapter (relating to Capacity to Request or Consent to Electronic Monitoring) and the individual has not been judicially declared to lack the required capacity;

(2) only by the guardian of an individual, if the individual has been judicially declared to lack the capacity required for taking an action such as requesting electronic monitoring; or

(3) only by an LAR, other than the guardian, of an individual if the individual's IDT determines that the individual does not have capacity to request electronic monitoring in accordance with §3.705 of this subchapter, but the individual has not been judicially declared to lack the required capacity.

(c) A facility may move an individual to a different bedroom to accommodate a request for electronic monitoring.

(d) A facility must maintain a completed and signed copy of the DADS *Request for Electronic Monitoring* form in the active portion of the clinical record of the individual requesting authorization to conduct electronic monitoring.

§3.704. Annual Consent of Other Individuals.

(a) An individual or an individual's LAR who requests to conduct electronic monitoring must obtain consent annually on behalf of any individual who shares a bedroom with the requesting individual, using the DADS *Information Regarding Electronic Monitoring* form. To provide consent, the form must be signed and dated by a person described in subsection (b) of this section and given to the director of the facility in which the individual resides. If the person's consent is conditioned on a limitation, the limitation must be stated on the form.

(b) Consent to conduct electronic monitoring may be given:

(1) only by an individual who shares a bedroom with the requesting individual, if the individual's IDT determines that the individual has capacity to consent to electronic monitoring in accordance with §3.705 of this subchapter (relating to Capacity to Request or Consent to Electronic Monitoring) and the individual has not been judicially declared to lack the required capacity; or

(2) only by the guardian of an individual who shares a bedroom with the requesting individual, if the individual has been judicially declared to lack the required capacity; or

(3) only by an LAR, other than the guardian, of an individual who shares a bedroom with the requesting individual, if the individual's IDT determines that the individual does not have capacity to consent to electronic monitoring in accordance with §3.705 of this subchapter, but the individual has not been judicially declared to lack the required capacity.

(c) Except as provided in subsection (g) of this section, consent given in accordance with this section may be conditioned on:

(1) pointing the camera away from the consenting individual, when the proposed EMD is a video surveillance camera;

(2) limiting or prohibiting the use of an audio EMD;

(3) limiting or prohibiting the use of a tape or recording made by an EMD; or

(4) limiting or prohibiting the use of an EMD in any other way.

(d) If an individual who has not yet consented to electronic monitoring moves into a bedroom in which electronic monitoring is being conducted, the electronic monitoring must cease until consent is obtained from or on behalf of the individual in accordance with this section.

(e) If more than a year has elapsed since consent was given by or on behalf of an individual who shares a bedroom with an individual conducting electronic monitoring, the electronic monitoring must cease until consent is obtained in accordance with this section.

(f) A facility must maintain a copy of the DADS *Information Regarding Electronic Monitoring* form in the active portion of the clinical records of the individual consenting to electronic monitoring.

(g) Consent that is subject to a condition, as described in subsection (c) of this section, must not prevent a person from complying with this subchapter or other law, including §3.708(a) of this subchapter (relating to Reporting Abuse, Neglect, and Exploitation). If a condition on consent would require a person to violate this subchapter or other law, the consent is not valid.

§3.706. Conducting Electronic Monitoring.

(a) A director who receives a completed DADS *Request for Electronic Monitoring* form and, if applicable, the DADS *Roommate Consent or Refusal of Electronic Monitoring* form, must review the forms to determine if they are properly completed. If they are properly completed, the director authorizes electronic monitoring to be conducted in accordance with this subchapter. The facility must notify a person who improperly completed a form and describe the deficiencies that need to be addressed to complete the form properly.

(b) A person conducting electronic monitoring must post and maintain a conspicuous notice at the entrance to the bedroom in which the monitoring is being conducted. The notice must state that the bedroom is being monitored by an EMD.

(c) A person conducting electronic monitoring must ensure that:

(1) the electronic monitoring is conducted in plain view;

(2) an EMD is installed and maintained in a manner that is safe for individuals, employees, and visitors, and that meets the requirements of applicable safety codes and laws;

(3) electronic monitoring complies with any condition placed on it by a person giving consent in accordance with §3.704 of this subchapter (relating to Annual Consent of Other Individuals);

(4) a video tape or recording made by the EMD shows the time and date that the recorded events occurred;

(5) a tape or recording made by the EMD is not edited or artificially enhanced; and

(6) if the contents of a recording are transferred from the original format to another technological format, a qualified professional performs the transfer and the content of the tape or recording is not altered.

(d) A person conducting electronic monitoring must pay for all costs associated with conducting the monitoring, including the cost to install, maintain, repair, and remove the EMD, and to post and remove the notice required by subsection (b) of this section, other than the cost of electricity.

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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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 802. INTEGRITY OF THE TEXAS WORKFORCE SYSTEM

SUBCHAPTER B. CONTRACTING

40 TAC §802.22

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 802, relating to Integrity of the Texas Workforce System, without changes, as published in the August 8, 2014, issue of the *Texas Register* (39 TexReg 6033):

Subchapter B. Contracting, §802.22

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 802 rule change is to set forth a formal process for Local Workforce Development Boards (Boards) to procure workforce service providers and specify an initial contract period of at least one year, not to exceed two years, and with subsequent renewals not to exceed a maximum of five years, prior to a new procurement. In determining whether to extend a contract for the option period, Boards shall consider the provider's performance, oversight of services, reasonableness of cost, and any other locally developed criteria.

Currently, Chapter 802 does not specify or define a contract period for Board-executed contracts regarding workforce service provider procurement. As a result, some contracts are awarded for extended periods without the benefit of new procurement.

The Agency's Financial Manual for Grants and Contracts §14.3 states that the procurement of all goods and services must be conducted, to the maximum extent practical, in a manner providing full and open competition that:

--promotes competition between suppliers, resulting in the best value for the money; and

--offers transparency that helps mitigate favoritism.

The Federal Acquisition Regulation (FAR) governs federal agency procurements. Boards are not required to comply with FAR, however, its guidance is the basis for FMGC policies. FAR defines multiyear contracting in 48 CFR Part 17 as a contract for the purchase of supplies or services for more than one--but not more than five--program years. Although a multiyear contract requires diligence in ongoing oversight, its benefits include reducing paperwork, stabilizing services, and a more balanced contract management workload.

The intent of this amendment is to:

--allow the Commission to promote full and open competition while providing Boards with contract flexibility at the local level; and

--define the maximum length of time for a service provider contract without a new procurement.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS (Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER B. CONTRACTING

The Commission adopts the following amendments to Subchapter B:

New §802.22. Board Contract Limits

New §802.22(1) adds that Boards shall procure a workforce service provider for an initial period of at least one year, not to exceed two years, allowing for subsequent renewals during an option period following the conclusion of the initial procurement period.

New §802.22(2) adds that when procuring a new workforce service provider, Boards shall ensure that the initial procurement and subsequent renewals do not exceed a maximum of five years total.

Boards are expected to timely conduct procurements, as appropriate, to ensure full and fair competition. Boards must review their current contracts and, consistent with existing obligations, align their practices with these requirements moving forward. Where a Board's existing contract exceeds the five-year limit under this new rule, the Board will be expected to re-procure at the next renewal point. Boards must timely prepare for re-procurement in order to minimize any holdover period beyond five years. The Board's procurement efforts, negotiation issues, and individual circumstances will be taken into consideration in determining the reasonableness of any holdover period.

New §802.22(3) adds that when determining whether to renew a contract during the option period following the completion of the initial procurement period, Boards shall consider a workforce service provider's performance, oversight of services, reasonableness of cost, and any other locally developed criteria.

No comments were received.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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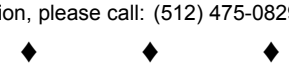
Proposal publication date: August 8, 2014
For further information, please call: (512) 475-0829



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §159.15 concerning GO KIDS Initiative. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

The Texas Board of Criminal Justice will propose amendments to §159.15.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, Sharon.Howell@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201404819
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: October 15, 2014

♦ ♦ ♦

Texas Facilities Commission

Title 1, Part 5

The Texas Facilities Commission (Commission) files this notice of intention to review Texas Administrative Code, Title 1, Part 5, Chapter 122, Space Management. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 122 relates to state agency requests for allocation, relinquishment, or modification of space in facilities under the Commission's control. In addition, this chapter establishes general space allocation guidelines applicable to certain facilities owned or leased by the State of Texas and further provides for state agency requests for waivers from such guidelines and appeals from Commission determinations concerning space allocation.

The Commission will accept public comments regarding the review for thirty (30) days following the publication of this notice in the *Texas Register.* Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional thirty (30) day public comment period prior to final adoption or repeal by the Commission.

Comments regarding this rule review should be directed to Kay Molina, General Counsel, Texas Facilities Commission, via electronic mail to *rulescomments@tfc.state.tx.us* and should state "Proposed Rule Review" in the subject line of e-mailed comments. Comments must be received no later than thirty (30) days from the date of publication of this notice in the *Texas Register.*

TRD-201404822
Kay Molina
General Counsel
Texas Facilities Commission
Filed: October 15, 2014

♦ ♦ ♦

Adopted Rule Reviews

Texas Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 213, concerning Electronic and Information Resources, pursuant to §2001.039, Texas Government Code, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 213 continue to exist.

Notice of the rule review was published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5907). No comments were received as a result of that notice.

As a result of the rule review, the department proposed amendments to Chapter 213 in the June 6, 2014, issue of the *Texas Register* (39 TexReg 4327). The Board adopted the amended chapter on August 21, 2014, and the adoption notice was published in the September 19, 2014, issue of the *Texas Register* (39 TexReg 7565).

The department's review of 1 TAC Chapter 213 is concluded.

TRD-201404774
Martin H. Zelinsky
General Counsel
Department of Information Resources
Filed: October 10, 2014

♦ ♦ ♦

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission has completed the rule review of 13 TAC Part 1, Chapter 9, concerning Talking Book

Program library services for persons who are blind or have a physical impairment, in accordance with Government Code §2001.039 that requires state agencies to review and consider for readoption each of their rules every four years. The proposed review was published in the May 30, 2014, issue of the *Texas Register* (39 TexReg 4275). The Commission received no comments on the review of Chapter 9.

The Commission assessed whether the reasons for readopting the rules in Chapter 9 continue to exist. The Commission found that the rules are necessary to establish procedures and policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission.

The rules are readopted pursuant to the Human Resources Code §91.082 that requires the State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials and Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library.

TRD-201404736
Edward Seidenberg
Deputy Director
Texas State Library and Archives Commission
Filed: October 8, 2014

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: 19 TAC §229.3(f)(1)

Accountability System: Standards disaggregated by gender and ethnicity (see demographics chart)	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.4, Determination of Accreditation Status
1. Certification examinations		√	Pass Rate—As defined in 19 TAC §229.2(24).	Certification scores will be uploaded into the accountability system for educator preparation (ASEP) system and calculated by academic year (September 1-August 31).
2. Beginning teacher performance		√	Results of beginning teacher appraisals by school administrators.	Online survey will be completed by school administrators by June 15 of each applicable year.
3. Student achievement		√	Improvement of student performance taught by beginning teachers for the first three years.	Date and method of collection when available.
4. Ongoing support by field supervisors to beginning teachers during their first year in the classroom	√	√	Data collections regarding frequency, duration, and quality of field supervision	Educator preparation program (EPP) will enter information in the ASEP system by September 15 of each year, documenting each field supervision contact by entering the following information: 1) teacher; 2) date of contact with teacher; 3) time of contact; and 4) documentation provided.
Annual Performance Report disaggregated by gender and ethnicity: (Appendix - demographics chart)	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.3, Required Submissions of Information, Surveys, and Other Data
1. Number of EPP applicants	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
2. Number of EPP candidates admitted	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
3. Number of candidates retained in the EPP	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.

Annual Performance Report disaggregated by gender and ethnicity: (Appendix - demographics chart)	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
4. Number of candidates completing all EPP requirements		√	Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
5. Number of EPP candidates retained in the profession		√	Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
6. Number of EPP candidates employed		√	Report included on the consumer information section of the TEA website.	TEA staff will generate a report utilizing ASEP system and Public Education Information Management System (PEIMS) data.
7. All information required by federal law	√		Report submitted by the EPP and included on the consumer information section of the TEA website.	EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
Consumer Information to be Posted on the TEA website:	**Report by Program**	**Report by State**	**Description of Data**	**Required Submission Date and Method of Reporting**
				19 TAC §229.3, Required Submissions of Information, Surveys, and Other Data
1. EPP status based on adherence to the standards		√	Accountability Status: standards disaggregated by gender and ethnicity. (see Appendix) To be posted on the TEA website in the consumer information section for each EPP.	All information will be posted annually on the TEA website in the consumer information section.
2. Annual Performance Report of each EPP	√	√	Seven data elements submitted by EPPs as required by TEC, §21.045(b). Information to be posted on the TEA website in the consumer information section for each EPP.	EPP will upload file or enter all elements of this section into ASEP system by September 15 for the preceding academic year. All information will be posted annually on the TEA website in the consumer information section.
3. Quality of persons admitted to the EPP:	√		To be posted on the TEA website in the consumer information section for each EPP.	All information will be posted on the TEA website in the consumer information section.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
a. Individual overall GPA	√		Required and calculated by EPP.	EPP will enter into the ASEP system by September 15 for the preceding academic year. For assistance in calculating the GPA: http://www.onlineconversion.com/grade_point_average.htm. EPP will upload a data file or enter all elements of this section into ASEP system by September 15 for the preceding academic year.
b. Individual GPA in specific subject area	√		Required and calculated for core subject areas per No Child Left Behind (NCLB) requirements.	EPP will enter into the ASEP system by September 15 for the preceding academic year. For assistance in calculating the GPA: http://www.onlineconversion.com/grade_point_average.htm.
c. Average overall GPA for the EPP		√		ASEP system will calculate the overall average GPA by EPP by September 15 for the preceding academic year.
d. Average overall GPA in subject areas by EPP		√		ASEP system will calculate the overall average GPA by EPP.
*** EPP will report ONE of the following of rows e through l for each candidate.**				
e. Individual total GRE® score and date	√		EPP will need to report the total score and the date. The GRE® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
f. Individual total SAT® score and date	√		EPP will need to report the total score and the date. The SAT® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
g. Individual ACT® score and date	√		EPP will need to report the total score and the date. The ACT® has been updated and will require dates.	EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.
h. Individual Texas Academic Skills Program® (TASP®)/Texas Higher Education Assessment® (THEA®) score and date	√			EPP will enter into data fields in the ASEP system by September 15 for the preceding academic year.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
i. ☐ None of the above		√		EPP will enter the number of candidates who qualify under the Texas Success Initiative (Texas Education Code, §51.3062) into the ASEP system by September 15 for the preceding academic year.
j. Average total GRE® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average GRE® by date and by EPP
k. Average total SAT® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average SAT® by date and by EPP
l. Average total ACT® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average ACT® by date and by EPP
m. Average total TASP®/THEA® score per EPP		√		EPP will enter into the ASEP system by September 15 for the preceding academic year. ASEP system will calculate the overall average TASP®/THEA® by EPP.
4. Candidates who are counted as finishing the EPP for pass rate purposes and who are successful in obtaining teaching positions		√	To be posted on the TEA website in the consumer information section for each EPP.	TEA will report candidates by EPP who have been issued a certificate and are identified in PEIMS as teacher of record.
5. Preparation of general education and special education teachers to effectively teach:			To be posted on the TEA website in the consumer information section for each EPP.	EPP assurances of compliance and the number of training/coursework hours will be entered into the ASEP system by September 15 for the preceding academic year.
a. Students with disabilities	√			EPP will provide assurances of compliance in the ASEP system by September 15 for the preceding academic year.
b. Students of limited English proficiency	√			EPP will provide assurances of compliance in the ASEP system by September 15 for the preceding academic year.
6. Activities offered by EPP to prepare teachers:			To be posted on the TEA website in the consumer information section for each EPP.	Data will be entered annually for the preceding academic year.

Consumer Information to be Posted on the TEA website:	Report by Program	Report by State	Description of Data	Required Submission Date and Method of Reporting
a. Integrate technology effectively into curricula and instruction including activities consistent with the principles of universal design for learning	√			EPP will provide assurances of compliance and the number of training/coursework hours in the ASEP system by September 15 for the preceding academic year.
b. Integrate technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement	√			EPP will provide assurances of compliance and the number of training/coursework hours in the ASEP system by September 15 for the preceding academic year.
7. Perseverance of beginning teachers in the profession for at least three years after certification as active members in the Teacher Retirement System of Texas (TRS)		√	To be posted on the TEA website in the consumer information section for each EPP.	TEA will obtain candidates by EPP who have been issued a certificate and are identified in PEIMS as teacher of record and the TRS. Results will be posted annually for the preceding academic year.
8. Results of exit surveys from EPP participants at the completion of the program that evaluate the program's effectiveness in preparing participants to succeed in the classroom		√	To be posted on the TEA website in the consumer information section for each EPP.	EPP participants will respond to an online survey presented at the time they apply for certification. Results will be posted annually by August 1 for the preceding academic year.
9. Results of surveys from school principals that evaluate the EPP's effectiveness in preparing participants to succeed in the classroom		√	To be posted on the TEA website in the consumer information section for each EPP.	Principals or designated administrators will complete by June 15, for the preceding academic year, individual teacher performance surveys for each beginning teacher who participated in an EPP. The online survey will be administered and collected by TEA. Results will be posted on the TEA website under consumer information.
10. Identify employment opportunities for teachers in the various regions of the state including shortage areas		√		TEA will provide employment information in various regions of Texas. TEA will identify teacher shortage areas. The information will be provided on the TEA website. Information will be updated annually for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
1. Admission Data:			EPPs report if they require the following criteria for admitting participants:	EPP will enter the data into a data field in the Institutional and Program Report Card (IPRC) system. All data must be completed by a date established by Title II for the preceding academic year.
a. Application	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
b. Fee/payment	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
c. Transcript	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
d. Fingerprint check	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
e. Background check	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
f. Experience in a classroom working with students	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
g. Minimum number of clock-hours completed	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
h. Minimum high school GPA	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
i. Minimum undergraduate GPA	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
j. Minimum GPA in content area coursework	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
k. Minimum GPA in professional education coursework	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
l. Minimum ACT® score	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
m. Minimum SAT® score	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
n. Minimum GRE® score	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
o. Minimum basic skills test score	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
p. Subject area/academic content test or other subject matter verification	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
q. Minimum Miller Analogies Test score	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
r. Recommendation(s)	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
s. Essay or personal statement	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
t. Interview	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
u. Resume	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
v. Baccalaureate degree or higher	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
w. Job offer from school/district	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
x. Personality test (e.g. Myers-Briggs Assessment)	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
y. Other (specify:_____ _____)	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
2. EPP Website	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
3. Time when individuals are formally admitted to the initial teacher certification program (freshman, sophomore, junior or senior year)	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
4. Does your EPP conditionally admit candidates?	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
5. Number of candidates enrolled by gender and ethnicity	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
6. Supervised clinical experience:	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
a. Average number of clock-hours prior to student/clinical teaching	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
b. Number of clock-hours required for student/clinical teaching	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
c. Number of full-time equivalent faculty in supervised clinical experience during this academic year (Institution of Higher Education and Pre K-12)	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
d. Number of candidates in supervised clinical experience during the academic year	√			EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section I: Educator Preparation Program Information				
7. Number of candidates who have been certified as teachers by subject and certification for three years	√	√		EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II. TEA will extract the data and send to the certification testing vender.
8. Total number of initial teacher certification program completers for three years	√	√		EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II. TEA will extract the data and send to the certification testing vender.
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
1. Annual quantifiable goals for increasing the number of prospective teachers trained in teacher shortage areas				EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
a. Math	√			
b. Science	√			
c. Special Education	√			
d. Instruction of limited English proficient (LEP) students	√			Title II will collect data regarding English language learner (ELL) students and also assurances of compliance. EPPs will enter this data into the IPRC system by a date established by Title II for the preceding academic year.
e. Other (specify:_____)	√			

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
2. Assurances:				
a. Training provided to prospective teachers. Responds to the identified needs of the local educational agencies or States where the institution's graduates are likely to teach, based on past hiring and recruitment trends.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
b. Training provided to prospective teachers is closely linked with the needs of schools and the instructional decisions new teachers face in the classroom.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
c. Prospective special education teachers receive coursework in core academic subjects and receive training in providing instruction in core academic subjects.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
d. General education teachers receive training in providing instruction to students with disabilities.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
e. General education teachers receive training in providing instruction to limited English proficient students.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
f. General education teachers receive training in providing instruction to students from low-income families.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section II: Goals and Assurances			EPPs will provide quantifiable goals with assurances.	EPP will enter the data into a data field in the IPRC system. All data must be completed by a date established by Title II for the preceding academic year.
g. Prospective teachers receive training on how to effectively teach in urban and rural schools, as applicable.	√			EPPs will enter data into the IPRC system by a date established by Title II for the preceding academic year.
Section III: Pass rates and scaled scores			Based on only teacher certification tests.	
1. Assessment of pass rates for the academic year		√		Certification test vendor will provide reports by EPP.
2. Summary pass rates for three years		√		Certification test vendor will provide reports by EPP
Section IV: Statement and Designation as Low-Performing				
1. EPP approval		√	TEA will determine the status of an EPP.	TEA will determine the status of an EPP through the implementation of the standards specified in 19 TAC §229.4(a)(1)-(4), for the preceding academic year.
2. EPP accredited		√		TEA will determine the status of an EPP through the implementation of the standards specified in 19 TAC §229.4(a)(1)-(4),for the preceding academic year.
Section V: Use of Technology - Prepare teachers to:			TEA will collect data and post on the TEA website in the consumer information section of the website.	
1. Integrate technology effectively into curricula and instruction.	√			EPPs will enter data regarding the use of technology into the IPRC system by a date established by Title II for the preceding academic year.
2. Use technology effectively to collect data to improve teaching and learning.	√			EPPs will enter data regarding the use of technology into the IPRC system by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section V: Use of Technology - Prepare teachers to:			TEA will collect data and post on the TEA website in the consumer information section of the website.	
3. Use technology effectively to manage data to improve teaching and learning.	√			EPPs will enter data regarding the use of technology into the IPRC system by a date established by Title II for the preceding academic year.
4. Use technology effectively to analyze data to improve teaching and learning.	√			EPPs will enter data regarding the use of technology into the IPRC system by a date established by Title II for the preceding academic year.
Section VI: Teacher Training			TEA will collect data and post on the TEA website in the consumer information section of the website.	
1. Teach students with disabilities effectively.	√	√		EPPs will enter data regarding students with disabilities into the IPRC system by a date established by Title II for the preceding academic year.
2. Participate as a member of an individualized education program team.	√	√		EPPs will enter data regarding students with disabilities into the IPRC system by a date established by Title II for the preceding academic year.
3. Teach students who are limited English proficient effectively.	√	√		EPPs will enter data regarding the teaching of students who have limited English proficiency into the IPRC system by a date established by Title II for the preceding academic year.
4. Teach students with disabilities effectively.	√	√		EPPs will enter data regarding teaching students who have learning disabilities into the IPRC system by a date established by Title II for the preceding academic year.
5. Participate as a member of an individualized education program team.	√	√		EPPs will enter data regarding teaching students who have learning disabilities into the IPRC system by a date established by Title II for the preceding academic year.

Data Elements Reported to the Higher Education Opportunity Act (HEOA):	Report by Program	Report by State	Description of Data	Texas Education Code (TEC), §21.045(b)(7), Federal Reporting HEOA and Title II Reporting Web site https://title2.ed.gov/default.asp
Section VI: Teacher Training			TEA will collect data and post on the TEA website in the consumer information section of the website.	
6. Teach students who are limited English proficient effectively.	√	√		EPPs will enter data regarding the teaching of students who have limited English proficiency into the IPRC system by a date established by Title II for the preceding academic year.

Appendix
Demographics Guidelines

ASEP will collect ethnicity and race information for candidates using the 1977 categories as well as using the new federal categories developed in 1997 as required by the United States Department of Education (USDE). The new federal category system requires that ethnicity and race be collected separately. It allows individuals to select multiple races. It requires all responses to be collected, but when reporting aggregate data to the USDE, a different set of categories is used for aggregate reporting. Beginning with the 2010-2011 academic year, Educator Preparation programs will report this information using the new categories only. The new categories are as follows:

Ethnicity	Race
Hispanic or Latino	American Indian or Alaska Native
Not Hispanic or Latino	Asian
	Black or African American
	Hawaiian or other Pacific Islander
	White

Aggregate Reporting Categories
Hispanic or Latino
American Indian or Alaska Native
Asian
Black or African American
Hawaiian or Other Pacific Islander
White
Two or more races

Rodrigo Jasso

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/20/14 - 10/26/14 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 10/20/14 - 10/26/14 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-201404807
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 14, 2014

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Texas Education Agency

Request for Applications Concerning the 2015-2016 Public Charter School Program Start-Up Grant

Filing Date. October 15, 2014

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-15-101 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title V, Part B, Subpart 1, Charter School Programs.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-15-101 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program start-up funds, and are one of the following: (1) a campus charter school approved by its local board of trustees pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before December 15, 2014, that submits all required documentation as required by the RFA and previously described in the "To the Administrator Addressed" letter dated August 29, 2014; (2) an open-enrollment charter school approved by the commissioner of education under the Generation 19 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school approved by the commissioner pursuant to the TEC, Chapter 12, Subchapter E; or (4) an open-enrollment charter school designated by the commissioner for the 2015-2016 school year as a new school under an existing charter. Charters awarded by the commissioner under the Generation 19 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charters submitting an application for a New School Designation for the 2015-2016 school year are considered eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2015-2016 Public Charter School Program Start-Up Grant are to provide financial assistance for the planning, program design, and initial implementation of charter schools and expand the number of high-quality charter schools available to students.

Dates of Project. The 2015-2016 Public Charter School Program Start-Up Grant will be implemented primarily during the 2015-2016 school year. Applicants should plan for a starting date of no earlier than May 1, 2015, and an ending date of no later than July 29, 2016, contingent on the continued availability of federal funding.

Project Amount. Approximately $7 million is available for funding the 2015-2016 Public Charter School Program Start-Up Grant. It is anticipated that approximately 10 to 15 grants of no more than $800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.state.tx.us.

All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Friday, December 5, 2014. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, December 16, 2014, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol Building), Austin, Texas 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201404817
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: October 15, 2014

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 24, 2014.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 24, 2014.** 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: 104th & Frankford/Affordable Storage, Incorporated; DOCKET NUMBER: 2014-1000-PWS-E; IDENTIFIER: RN106514029; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 4.0 milligrams per liter for fluoride based on the running annual average; PENALTY: $168; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(2) COMPANY: Alfreda L. Samuel; DOCKET NUMBER: 2014-1454-WOC-E; IDENTIFIER: RN103246278; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(3) COMPANY: BASF CORPORATION; DOCKET NUMBER: 2013-2226-MLM-E; IDENTIFIER: RN100634922; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §335.10(a)(1) and 40 Code of Federal Regulations (CFR) §262.20(a), by failing to include a Texas Waste Code for each hazardous waste itemized on the manifest; 30 TAC §335.9(a)(2) and (2)(B), by failing to provide a complete and accurate Annual Waste Summary detailing the management of each hazardous and Class I waste generated on-site during the report calendar year; 30 TAC §335.69(a)(1)(B) and §335.112(a)(9) and 40 CFR §§262.34(a)(1)(ii), 264.172 and 265.190, by failing to use a tank made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the tank to contain the waste is not impaired; 30 TAC §§335.62, 335.503 and 335.504 and 40 CFR §262.11, by failing to conduct hazardous waste determinations and classifications; and 30 TAC §335.2, §331.63(h) and 40 CFR §270.1 and Under Ground Injection Control Permit Numbers WDW155 and WDW201 Provision Numbers V.C. and VI.A., by failing to maintain chemical or physical characteristic of the injected fluids within specified permit limits for the protection of the injection well, associated facilities, and injection zone and to ensure proper operation of the facility; PENALTY: $72,160; Supplemental Environmental Project offset amount of $28,864 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Center Point Supply, Incorporated dba Childrens Depot; DOCKET NUMBER: 2014-0479-PWS-E; IDENTIFIER: RN101179091; LOCATION: Pipe Creek, Bandera County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f)(2), by failing to collect a raw groundwater source *Escherichia coli* sample from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample and failing to timely provide public notification regarding the failure to collect a raw groundwater source sample during the month of September and October 2011; 30 TAC §290.122(c)(2)(A) and (f)(2), by failing to timely provide public notification regarding the failure to conduct increased coliform monitoring for the month of October 2011; 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f)(2), 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 failed to timely provide public notice of the failure to submit DLQORs to the executive director; 30 TAC §§290.106(e), 290.107(e), 290.113(e), and 290.117(i)(1), by failing to provide the results of triennial Stage 1 Disinfectant Byproduct, cyanide, synthetic organic chemical contaminants, metal, mineral, and lead and copper sampling to the executive director; 30 TAC §290.106(c)(6) and (e), by failing to collect the annual

nitrate sample and provide the results to the executive director for the 2013 monitoring period; and 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 by the tenth day of the month following the end of the monitoring period; PENALTY: $1,648; ENFORCEMENT COORDINATOR: Heather Brister, (817) 588-5825; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Chevron Midcontinent, L.P.; DOCKET NUMBER: 2014-0967-AIR-E; IDENTIFIER: RN102523578; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: oil and gas plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2893, General Terms and Conditions, by failing to submit an initial notification for a reportable emissions event within 24 hours of discovery; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O2893, Special Terms and Conditions Number 6, and New Source Review Permit Number 48510, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $3,975; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(6) COMPANY: Daniel C. Moore; DOCKET NUMBER: 2014-1399-WOC-E; IDENTIFIER: RN107514333; LOCATION: Livingston, Polk County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(7) COMPANY: Equistar Chemicals, L.P.; DOCKET NUMBER: 2014-1076-AIR-E; IDENTIFIER: RN100542281; LOCATION: Channelview, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), New Source Review Permit Numbers 1768, PSDTX1272, and N142, Special Conditions Number 1, Federal Operating Permit Number O1426, General Terms and Conditions and Special Terms and Conditions Number 32, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,563; Supplemental Environmental Project offset amount of $2,625 applied to Houston Regional Monitoring Corporation; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Hills Construction; DOCKET NUMBER: 2014-1478-WR-E; IDENTIFIER: RN107388324; LOCATION: Waller, DeWitt County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(9) COMPANY: Jose Ramos and Hilda P. Ramos; DOCKET NUMBER: 2014-1012-MSW-E; IDENTIFIER: RN107243628; LOCATION: Argyle, Denton County; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: LEIGH WATER SUPPLY CORPORATION; DOCKET NUMBER: 2014-1029-PWS-E; IDENTIFIER: RN101235323; LOCATION: Karnack, Harrison County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.113(f)(5) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for total haloacetic acids, based on the running annual average; PENALTY: $157; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Manning Homes, Incorporated; DOCKET NUMBER: 2014-1431-WQ-E; IDENTIFIER: RN107464166; LOCATION: Nolanville, Bell County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Mohammed F. Karim dba Four Corners Exxon; DOCKET NUMBER: 2014-1230-PST-E; IDENTIFIER: RN102783644; LOCATION: Brenham, Washington County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Port of Houston Authority; DOCKET NUMBER: 2014-1459-WQ-E; IDENTIFIER: RN103123113; LOCATION: Houston, Harris County; TYPE OF FACILITY: shipping port; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain Construction General Permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Rio Water Supply Corporation; DOCKET NUMBER: 2014-1395-WR-E; IDENTIFIER: RN102642295; LOCATION: Rio Grande City, Starr County; TYPE OF FACILITY: water provider; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $875; ENFORCEMENT COORDINATOR: Alan Barraza, (512) 239-4642; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Robert Mendez; DOCKET NUMBER: 2014-1446-WOC-E; IDENTIFIER: RN103635496; LOCATION: Yorktown, Dewitt County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rachel Bekowies, (512) 239-2608; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(16) COMPANY: Select Energy Services, LLC; DOCKET NUMBER: 2014-1113-MLM-E; IDENTIFIER: RN107312951; LOCATION: Mertzon, Irion County; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: 30 TAC §285.3(a) and (b) and Texas Health and Safety Code, §366.051(a), by failing to obtain authorization prior to constructing, installing, and operating an on-site sewage facility; and TWC, §26.121(a), by failing to prevent the discharge of wastewater into or adjacent to any water in the state; PENALTY: $1,700; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(17) COMPANY: SHAHTAJ ENTERPRISES INCORPORATED dba Main Street Food Mart; DOCKET NUMBER: 2014-1052-PST-E;

IDENTIFIER: RN102347697; LOCATION: Robstown, Nueces County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $2,438; ENFORCEMENT COORDINATOR: John Duncan, (512) 239-2720; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: SHALIMAR ENTERPRISE INCORPORATED dba Fisco Convenience Store 2; DOCKET NUMBER: 2014-0871-PST-E; IDENTIFIER: RN101854453; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $1,612; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: TEXAS RENAISSANCE FESTIVALS, INCORPORATED; DOCKET NUMBER: 2014-1214-PST-E; IDENTIFIER: RN102860368; LOCATION: Plantersville, Grimes County; TYPE OF FACILITY: fleet refueling; 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: $3,563; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: TRAILSWEST MOBILE HOME PARK, LLC; DOCKET NUMBER: 2014-0989-PWS-E; IDENTIFIER: RN101182855; LOCATION: Texarkana, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect the raw groundwater source Escherichia coli *(E. coli)* sample from the active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample, failing to collect a set of repeat distribution total coliform samples, and by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to collect the raw groundwater source *E. coli* sample for the month of November 2013; 30 TAC §290.122(c)(2)(A) and (f), by failing to timely provide public notification and timely submit a copy of the public notification to the executive director regarding the failure within 24 hours of being notified of a total coliform-positive sample result on a routine sample collected in November 2013, by failing to provide the results of nitrate sampling for the 2012 monitoring period, and by failing to submit the Disinfectant Level Quarterly Operating Reports for the first and second quarters of 2013; 30 TAC §§290.107(e), 290.113(e) and 290.122(c)(2)(A) and (f), by failing to provide the results of triennial synthetic organic chemical contaminants and Stage 1 disinfectant byproducts (DBP1) sampling to the executive director, and by failing to timely provide public notification and timely submit a copy of the public notification to the executive director regarding the failure to provide the results of triennial DBP1 sampling; 30 TAC §290.106(e), by failing to provide the results of sexennial metal sampling to the executive director for the January 1, 2008 - December 31, 2013 monitoring period; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 90190059 for Fiscal Years 2011 - 2013; PENALTY: $770; ENFORCEMENT COORDINATOR: Lisa Westbrook, (512) 239-1160; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: Troy L. Williams dba Bell and Ford Marina Campground; DOCKET NUMBER: 2014-0772-PWS-E; IDENTIFIER: RN101220390; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate sampling to the executive director for the 2012 and 2013 monitoring periods; 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; 30 TAC §290.106(e) and §290.107(e), by failing to timely provide the results of triennial metals, minerals, cyanide, and synthetic organic chemical contaminants sampling to the executive director for the January 1, 2011 - December 31, 2013 monitoring period; 30 TAC §290.107(e) and §290.108(e), by failing to timely provide the results of six-year volatile organic chemical contaminants and radionuclides sampling to the executive director for the January 1, 2007 - December 31, 2012 monitoring period; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 92360027 for Fiscal Year 2014; PENALTY: $664; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: W.T. Byler Company, Incorporated; DOCKET NUMBER: 2014-1451-WR-E; IDENTIFIER: RN107392128; LOCATION: Sinton, San Patricio County; TYPE OF FACILITY: water pump; RULES VIOLATED: TWC §11.081 and §11.121, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $350; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

TRD-201404805
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 14, 2014

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Enforcement Orders

An agreed order was entered regarding Joshua Walker dba Walker Landscaping, Docket No. 2012-1234-LII-E on September 17, 2014, assessing $765 in administrative penalties with $153 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding METROPLEX LUCKY STAR, LLC dba Valero Food Mart 4, Docket No. 2013-1584-PST-E on September 17, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SERVICE STOP, L.P. dba Triple J Travel Mart, Docket No. 2013-1840-PST-E on September 17, 2014, assessing $4,380 in administrative penalties with $876 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-

2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arlies Holliefield, Docket No. 2014-0036-MLM-E on September 17, 2014, assessing $2,650 in administrative penalties with $1,450 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM RAYBURN WATER, INC., Docket No. 2014-013-4-PWS-E on September 17, 2014, assessing $6,621 in administrative penalties with $1,323 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Synergy 500 Investments, LLC dba A Warehouse 4 U, Docket No. 2014-0155-PWS-E on September 17, 2014, assessing $3,643 in administrative penalties with $728 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of New Summerfield, Docket No. 2014-0174-MWD-E on September 17, 2014, assessing $6,050 in administrative penalties with $1,210 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKESHORE UTILITY COMPANY, Docket No. 2014-0187-PWS-E on September 17, 2014, assessing $4,783 in administrative penalties with $956 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2676, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Justin Watford and Don Watford, Docket No. 2014-0204-WQ-E on September 17, 2014, assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Santa Rosa, Docket No. 2014-0222-PWS-E on September 17, 2014, assessing $1,755 in administrative penalties with $351 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lawn, Docket No. 2014-0241-PWS-E on September 17, 2014, assessing $1,740 in administrative penalties with $348 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NIZAMI, LLC dba K-1, Docket No. 2014-0247-PST-E on September 17, 2014, assessing $4,097 in administrative penalties with $819 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PEACE BUSINESS, INC. dba Buzzy Bee, Docket No. 2014-0260-PST-E on September 17, 2014, assessing $2,073 in administrative penalties with $414 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRI-COUNTY POINT PROPERTY OWNERS ASSOCIATION, Docket No. 2014-0269-PWS-E on September 17, 2014, assessing $575 in administrative penalties with $115 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Childress, Docket No. 2014-0275-PWS-E on September 17, 2014, assessing $356 in administrative penalties with $71 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALBURY MANOR UTILITY COMPANY, INC., Docket No. 2014-0311-PWS-E on September 17, 2014, assessing $1,110 in administrative penalties with $222 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIRST STATES INVESTORS 5200, LLC, Docket No. 2014-0315-PWS-E on September 17, 2014, assessing $1,938 in administrative penalties with $387 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cresson Crossroads, LLC, Docket No. 20140322PWSE on September 17, 2014, assessing $1,619 in administrative penalties with $323 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2014-0328-PWS-E on September 17, 2014, assessing $400 in administrative penalties with $80 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMARILLO WEST R.V. PARK, L.L.C. dba Cadillac RV, Docket No. 2014-0332-PWS-E on September 17, 2014, assessing $673 in administrative penalties with $134 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lyle B. Murphey dba Highway 71 Storage and Mobile Home Park, Docket No. 2014-0333-PWS-E on September 17, 2014, assessing $2,061 in administrative penalties with $411 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Petroleum Welding, Inc. dba Profab Corporation, Docket No. 2014-0341-PWS-E on September 17, 2014, assessing $142 in administrative penalties with $142 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regency Field Services LLC, Docket No. 2014-0343-PWS-E on September 17, 2014, assessing $1,397 in administrative penalties with $279 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ric Peterson dba Junction Country Store, Docket No. 2014-0351-PWS-E on September 17, 2014, assessing $867 in administrative penalties with $173 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2014-0352-PWS-E on September 17, 2014, assessing $853 in administrative penalties with $170 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TEXPAK ENTERPRISES, INC. dba Circle A Food Mart 5, Docket No. 2014-0357-PWS-E on September 17, 2014, assessing $4,093 in administrative penalties with $818 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 2012 Weatherford Holdings, LLC dba Highland Meadows, Docket No. 2014-0358-PWS-E on September 17, 2014, assessing $2,653 in administrative penalties with $530 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Catherine Murray dba Shady Oaks Mobile Home Park, Docket No. 2014-0363-PWS-E on September 17, 2014, assessing $2,083 in administrative penalties with $415 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Milagro Interests, Inc. dba Barefoot RV Park, Docket No. 2014-0364-PWS-E on September 17, 2014, assessing $1,626 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shane and Sons Transportation, Inc. S&M Transport, Docket No. 2014-0368-PST-E on September 17, 2014, assessing $3,860 in administrative penalties with $772 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jorge Burgos dba Burgos Lawn Care, Docket No. 2014-0379-MSW-E on September 17, 2014, assessing $3,607 in administrative penalties with $721 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Care Cleaner Enterprises, LLC dba Y Pay More Dry Cleaners, Docket No. 2014-0380-DCL-E on September 17, 2014, assessing $1,696 in administrative penalties with $339 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Poteet, Docket No. 2014-0387-PWS-E on September 17, 2014, assessing $74 in administrative penalties with $14 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HORIZON TRADERS, INC. dba Hello Food Mart, Docket No. 2014-0389-PST-E on September 17, 2014, assessing $5,135 in administrative penalties with $1,027 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Calvert C. Huffmaster, Jr. dba Coleto Creek Mobile Home Park, Docket No. 2014-0396-PWS-E on September 17, 2014, assessing $2,684 in administrative penalties with $536 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Uplifting Properties, LP, Docket No. 2014-0400-PWS-E on September 17, 2014, assessing $1,529 in administrative penalties with $305 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JARVIS CHRISTIAN COLLEGE, Docket No. 2014-0402-PWS-E on September 17, 2014, assessing $399 in administrative penalties with $79 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SOUTHBOUND INC. dba Leon Springs Business Park, Docket No. 2014-0403-PWS-E on September 17, 2014, assessing $1,504 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VILLIANI ENTERPRISES INC. dba Bear Creek Food Store, Docket No. 2014-0404-PST-E on September 17, 2014, assessing $7,156 in administrative penalties with $1,431 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Olney, Docket No. 2014-0405-MWD-E on September 17, 2014, assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burnet, Docket No. 2014-0406-MWD-E on September 17, 2014, assessing $6,250 in administrative penalties with $1,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wharton, Docket No. 2014-0408-MWD-E on September 17, 2014, assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED PETROLEUM TRANSPORTS, INC., Docket No. 2014-0422-PST-E on September 17, 2014, assessing $1,044 in administrative penalties with $208 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEW PROGRESS WATER SUPPLY CORPORATION, Docket No. 2014-0427-PWS-E on September 17, 2014, assessing $458 in administrative penalties with $91 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2014-0436-AIR-E on September 17, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tarkington Safari Investments, Inc. dba Tarkington Country Mart, Docket No. 2014-0448-PST-E on September 17, 2014, assessing $4,772 in administrative penalties with $954 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2014-0453-AIR-E on September 17, 2014, assessing $5,062 in administrative penalties with $1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2014-0456-AIR-E on September 17, 2014, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bertha Espinosa dba Easy Shop Complex, Docket No. 2014-0467-PWS-E on September 17, 2014, assessing $110 in administrative penalties with $22 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.L.C. WATER SUPPLY CORPORATION, Docket No. 2014-0476-PWS-E on September 17, 2014, assessing $660 in administrative penalties with $132 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THE CAMP RECOVERY CENTERS, L.P. dba Starlite Recovery Center, Docket No. 2014-0492-PWS-E on September 17, 2014, assessing $3,177 in administrative penalties with $634 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Odfjell Terminals (Houston) Inc., Docket No. 2014-0497-AIR-E on September 17, 2014, assessing $3,300 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PHW, EMW, AWB & EB Texas, LLC dba House Water System, Docket No. 2014-0502-PWS-E on September 17, 2014, assessing $805 in administrative penalties with $161 deferred.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nelson Gardens Energy, LLC, Docket No. 2014-0505-AIR-E on September 17, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities Inc., Docket No. 2014-0511-PWS-E on September 17, 2014, assessing $1,523 in administrative penalties with $304 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Glen Rose, Docket No. 2014-0512-MWD-E on September 17, 2014, assessing $1,575 in administrative penalties with $315 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Plains, Docket No. 2014-0513-PWS-E on September 17, 2014, assessing $200 in administrative penalties with $40 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MISHAL GROCERIES INC. dba Boomers, Docket No. 2014-0516-PST-E on September 17, 2014, assessing $3,567 in administrative penalties with $713 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flint Hills Resources Corpus Christi, LLC, Docket No. 2014-0535-AIR-E on September 17, 2014, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Veelock, LLC dba Wheelock Express, Docket No. 2014-0552-PWS-E on September 17, 2014, assessing $224 in administrative penalties with $44 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZZF Diamond, Inc. dba Metro Mart, Docket No. 2014-0561-PST-E on September 17, 2014, assessing $2,976 in administrative penalties with $595 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Energy Production Corporation, Docket No. 2014-0562-AIR-E on September 17, 2014, assessing $4,312 in administrative penalties with $862 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Laredo, Docket No. 2014-0564-PWS-E on September 17, 2014, assessing $585 in administrative penalties with $117 deferred.

Information concerning any aspect of this order may be obtained by contacting Abigail Lindsey, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CIRCLE G BUSINESS, INC. dba Eastmount Texaco, Docket No. 2014-0566-PST-E on September 17, 2014, assessing $2,224 in administrative penalties with $444 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2696, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding 4 Way Land & Cattle dba Sanctuary Oaks Addition, Docket No. 2014-0570-WQ-E on September 17, 2014, assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranch Utilities, L.P., Docket No. 2014-0575-MWD-E on September 17, 2014, assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Fresh Water Supply District 1B, Docket No. 2014-0591-PWS-E on September 17, 2014, assessing $180 in administrative penalties with $36 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abdul Rehman Kanji dba Texas City Shell, Docket No. 2014-0593-PST-E on September 17, 2014, assessing $1,360 in administrative penalties with $272 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding THOMPSON HEIGHTS DEVELOPMENT COMPANY, Docket No. 2014-0603-PWS-E on September 17, 2014, assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greenville Electric Utility System, Docket No. 2014-0610-AIR-E on September 17, 2014, assessing $3,075 in administrative penalties with $615 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PANJWANI ENERGY, LLC dba Tetco Store 73, Docket No. 2014-0637-PST-E on September 17, 2014, assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2014-0641-AIR-E on September 17, 2014, assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SEHAM CSTORE LLC dba Sunrise Fuel, Docket No. 2014-0647-PST-E on September 17, 2014, assessing $7,125 in administrative penalties with $1,425 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TBM HEAT TREATING, INC., Docket No. 2014-0648-IHW-E on September 17, 2014, assessing $787 in administrative penalties with $157 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grace International Churches and Ministries, Inc. dba Center for Empowerment, Docket No. 2014-0666-PWS-E on September 17, 2014, assessing $1,035 in administrative penalties with $207 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alfie's Food Mart, Inc. dba Schulenburg Food Mart, Docket No. 2014-0668-PST-E on September 17, 2014, assessing $4,875 in administrative penalties with $975 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Henrietta, Docket No. 2014-0697-MWD-E on September 17, 2014, assessing $4,062 in administrative penalties with $812 deferred.

Information concerning any aspect of this order may be obtained by contacting Katleyn Samples, Enforcement Coordinator at (512) 239-4728, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B&M MARUTI LLC dba Shell Food Store, Docket No. 2014-0704-PST-E on September 17, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Odis H. Pfeiffer II, Docket No. 2014-0808-WOC-E on September 17, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CENTRAL FOODS, INC. dba Pik Nik Foods 29, Docket No. 2013-0521-PST-E on October 1, 2014, assessing $3,882 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-

2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ECOLOGIST SERVICES & DISPOSITION, INC., Docket No. 2013-1972-MSW-E on October 1, 2014, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUTTON HILLS ESTATES PROPERTY OWNERS' ASSOCIATION, INC., Docket No. 2014-0069-PWS-E on October 1, 2014, assessing $1,230 in administrative penalties with $245 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lonzo J. Gale dba Shelby Water, Docket No. 2014-0072-PWS-E on October 1, 2014, assessing $1,747 in administrative penalties with $349 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mary F. Trammell dba Trammell's Running Creek RV Park & Store, Docket No. 2014-0132-PWS-E on October 1, 2014, assessing $1,400 in administrative penalties with $280 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E & M Equity Holdings, LLC., Docket No. 2014-0183-PWS-E on October 1, 2014, assessing $1,947 in administrative penalties with $388 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Felipe Aguirre dba American Metal Recycling, Docket No. 2014-0268-WQ-E on October 1, 2014, assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Gregory Zychowski, Enforcement Coordinator at (512) 239-3158, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wind Clean Corp., Docket No. 2014-0307-AIR-E on October 1, 2014, assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI Waste Systems of North America, LLC, Docket No. 2014-0319-MSW-E on October 1, 2014, assessing $2,624 in administrative penalties with $524 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel C. Zapata dba Daniel's Insulation, Docket No. 2014-0335-MSW-E on October 1, 2014, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAI INVESTMENTS INC dba Deesway Grocery, Docket No. 2014-0390-PST-E on October 1, 2014, assessing $4,094 in administrative penalties with $818 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Horwood, Docket No. 2014-0434-MSW-E on October 1, 2014, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Webb Linne and Aubrey Arthur Linne, Docket No. 2014-0440-WR-E on October 1, 2014, assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Adrian, Docket No. 2014-0457-PWS-E on October 1, 2014, assessing $1,120 in administrative penalties with $224 deferred.

Information concerning any aspect of this order may be obtained by contacting Katie Hargrove, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wellborn Special Utility District, Docket No. 2014-0463-PWS-E on October 1, 2014, assessing $963 in administrative penalties with $192 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enervest Operating, L.L.C., Docket No. 2014-0522-WR-E on October 1, 2014, assessing $1,013 in administrative penalties with $202 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KUM Enterprises Inc dba Corner Food Mart, Docket No. 2014-0529-PST-E on October 1, 2014, assessing $3,126 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RediMix, LLC, Docket No. 2014-0543-PST-E on October 1, 2014, assessing $5,819 in administrative penalties with $1,163 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Central Water Control and Improvement District of Angelina County, Docket No. 2014-0553-PWS-E on October 1, 2014, assessing $315 in administrative penalties with $63 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carolyn Maxey dba Channel Oaks Water System, Docket No. 2014-0554-PWS-E on October 1, 2014, assessing $170 in administrative penalties with $34 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Grand Harbor Water Supply Corporation, Docket No. 2014-0560-PWS-E on October 1, 2014, assessing $155 in administrative penalties with $31 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joe's & Cho, Inc. dba Joe's Future Food Mart, Docket No. 2014-0568-PST-E on October 1, 2014, assessing $1,562 in administrative penalties with $312 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lewis Petro Properties, Inc., Docket No. 2014-0569-AIR-E on October 1, 2014, assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lincoln Manufacturing, Inc., Docket No. 2014-0571-AIR-E on October 1, 2014, assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-0779, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Franklin Johnson III, Docket No. 2014-0588-MSW-E on October 1, 2014, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LANXESS Corporation, Docket No. 2014-0589-AIR-E on October 1, 2014, assessing $6,563 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walcott Independent School District, Docket No. 2014-0602-PWS-E on October 1, 2014, assessing $100 in administrative penalties with $20 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FML Sand, LLC, Docket No. 2014-0605-OSS-E on October 1, 2014, assessing $168 in administrative penalties with $33 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rocio Hernandez, Docket No. 2014-0609-MSW-E on October 1, 2014, assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Allyson Plantz, Enforcement Coordinator at (512) 239-4593, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COLORADO MATERIALS, LTD., Docket No. 2014-0611-AIR-E on October 1, 2014, assessing $2,350 in administrative penalties with $470 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (210) 403-4063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ONE WAY DIRECTION CORPORATION dba Somerville Mart, Docket No. 2014-0616-PST-E on October 1, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIKE CARLSON MOTOR CO., Docket No. 2014-0626-PST-E on October 1, 2014, assessing $4,732 in administrative penalties with $946 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2720, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2014-0627-PWS-E on October 1, 2014, assessing $364 in administrative penalties with $72 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHARTWELL PROPERTIES, LP, Docket No. 2014-0633-WQ-E on October 1, 2014, assessing $1,125 in administrative penalties with $225 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwestern Bell Telephone Company dba AT&T Texas, Docket No. 2014-0635-PWS-E on October 1, 2014, assessing $270 in administrative penalties with $54 deferred.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Trentco Management, LLC dba KERRVILLE RECYCLING #2, Docket No. 2014-0664-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLARK MART CORPORATION dba Clark Road Mobil, Docket No. 2014-0679-PST-E on October 1, 2014, assessing $2,568 in administrative penalties with $513 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Roofing and Asphalt, LLC, Docket No. 2014-0686-AIR-E on October 1, 2014, assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duncanville Independent School District, Docket No. 2014-0703-PST-E on October 1, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INAARA INVESTMENTS, INC. dba Fuzzys 2, Docket No. 2014-0710-PST-E on October 1, 2014, assessing $1,551 in administrative penalties with $310 deferred.

Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-1337, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kenedy, Docket No. 2014-0731-IWD-E on October 1, 2014, assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Burton Grocers, Inc. dba Stop N Save 3, Docket No. 2014-0735-PST-E on October 1, 2014, assessing $2,438 in administrative penalties with $487 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRex Properties, LP, Docket No. 2014-0758-PWS-E on October 1, 2014, assessing $1,094 in administrative penalties with $218 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David Lopez, Docket No. 2014-0760-WOC-E on October 1, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sig-Longmire, LLC, Docket No. 2014-0770-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILL COUNTRY MINI MART, LP dba Mini Mart 66, Docket No. 2014-0797-PST-E on October 1, 2014, assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Bullard Brothers Properties, Docket No. 2014-0857-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cholla Petroleum Inc., Docket No. 2014-0858-WR-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Gonzales and Associates, Docket No. 2014-0859-WR-E on October 1, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Junction Builders, LLC, Docket No. 2014-0860-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Teal Construction Company, Docket No. 2014-0861-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding NetMar LLC, Docket No. 2014-0862-WR-E on October 1, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Marathon Oil EF LLC, Docket No. 2014-0932-WR-E on October 1, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Arnold Trucking Inc, Docket No. 2014-0949-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alex Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Edanbra Development LC, Docket No. 2014-0951-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Reece Albert, Inc., Docket No. 2014-0972-WR-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding William Roy Hennig, Docket No. 2014-0973-WR-E on October 1, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dennis Rabroker, Docket No. 2014-0976-WOC-E on October 1, 2014, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Sidney Dewayne Walley, Docket No. 2014-0984-MLM-E on October 1, 2014, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Cameo Homes Inc, Docket No. 2014-0992-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Megatel Homes, Inc., Docket No. 2014-1021-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alan Barraza, Enforcement Coordinator at (512) 239-4642, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Midwest Engine Inc, Docket No. 2014-1045-WQ-E on October 1, 2014, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alex Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2012-0331-AIR-E on October 8, 2014, assessing $34,300 in administrative penalties with $6,860 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richter-Land, LLC, Docket No. 2012-1922-EAQ-E on October 8, 2014, assessing $12,000 in administrative penalties with $8,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding 8 Mile Park, L.P., Docket No. 2012-2343-MWD-E on October 8, 2014, assessing $49,649 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Dow Chemical Company, Docket No. 2013-0736-AIR-E on October 8, 2014, assessing $83,825 in administrative penalties with $16,765 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Robert A. Garner, Docket No. 2013-1530-LII-E on October 8, 2014, assessing $3,416 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Rogelio Esquivel and Angelita Esquivel, Docket No. 2013-1903-MSW-E on October 8, 2014, assessing $22,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey J. Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Shawn Mark Yarbrough dba Walnut Ridge Estates Water System, Docket No. 2013-1930-PWS-E on October 8, 2014, assessing $3,568 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phillips 66 Company, Docket No. 2013-1942-AIR-E on October 8, 2014, assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Exterior Repair International, LLC, Docket No. 2013-2012-MSW-E on October 8, 2014, assessing $17,472 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bottom Line Food Processors, Inc., Docket No. 2013-2113-MLM-E on October 8, 2014, assessing $11,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding D+A Financial Services, LLC dba Astro Autos, Docket No. 2013-2142-MSW-E on October 8, 2014, assessing $250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Riviera Club Inc. dba Stop N Bye, Docket No. 2013-2219-PST-E on October 8, 2014, assessing $3,937 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palai, LLC. dba Lone Star Food, Docket No. 2014-0090-PST-E on October 8, 2014, assessing $8,712 in administrative penalties with $1,742 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2014-0120-AIR-E on October 8, 2014, assessing $22,751 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pamela Sue Hughes dba Big Q Mobile Home Estates, Docket No. 2014-0127-PWS-E on October 8, 2014, assessing $13,736 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2014-0197-AIR-E on October 8, 2014, assessing $98,637 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, Enforcement Coordinator at (713) 767-3567, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ST EML, LLC, Docket No. 2014-0235-WQ-E on October 8, 2014, assessing $8,750 in administrative penalties with $1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2547, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burkburnett, Docket No. 2014-0243-PWS-E on October 8, 2014, assessing $2,100 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Deer Park, Docket No. 2014-0296-MWD-E on October 8, 2014, assessing $22,875 in administrative penalties with $4,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Mejia, Enforcement Coordinator at (512) 239-5460, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2014-0336-AIR-E on October 8, 2014, assessing $67,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Byers, Docket No. 2014-0623-PWS-E on October 8, 2014, assessing $660 in administrative penalties with $660 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201404815
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 15, 2014

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Notice of a Proposed Renewal with Amendment of a General Permit Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ) is proposing to renew and amend Texas Pollutant Discharge Elimination System (TPDES) General Permit TXG670000. This general permit authorizes the discharge of hydrostatic test water from new vessels; vessels that contained raw water, potable water, or elemental gases; or vessels that contained petroleum product or waste related to petroleum products. The proposed general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft renewal with amendments of an existing general permit that authorizes the discharge of hydrostatic test water from new vessels; vessels that contained raw water, potable water, or elemental gases; or vessels that contained petroleum product or waste related to petroleum products. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require certain dischargers to submit a Notice of Intent (NOI), to obtain authorization for discharges.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Advisory Committee regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices and on the TCEQ Web site at *http://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *www.tceq.texas.gov/about/comments.html* within 30 days from the date this notice is published in the *Texas Register.*

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit 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: *http://www.tceq.texas.gov.*

Further information may also be obtained by calling Laurie Fleet of the TCEQ Water Quality Division at (512) 239-5445.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-201404794
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 13, 2014

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Notice of Minor Amendment Radioactive Material License Number R04100

APPLICATION. The Executive Director is initiating a minor amendment to Waste Control Specialists LLC (WCS) Radioactive Material License R04100 in accordance with 30 TAC §305.62(i)(2), which does not pose a detrimental impact on public health and safety, worker safety, or environmental health. Radioactive Material License R04100 authorizes commercial disposal of low-level radioactive waste and

storage and processing of radioactive waste. WCS currently conducts a variety of waste management services at its site in Andrews County, Texas and is the licensed operator of the Compact Waste Disposal Facility (CWF) and Federal Facility Waste Facility (FWF) for commercial and federal low-level radioactive waste disposal. The land disposal facility for low-level radioactive waste disposal is located at 9998 State Highway 176 West in Andrews County, Texas. The Executive Director has determined that a minor amendment to the license is appropriate because not only does it not pose a detrimental impact but also is in consideration of public health and safety, worker safety, or environmental health with regard to storage and disposal of low-level radioactive waste. The license will be amended to add the Federal Waste Facility to the approved list of temporary waste storage locations in certain conditions. Interim storage of waste in this facility will be approved on a case-by-case basis. Under the same consideration as required for a minor amendment, the license is also amended to allow overnight storage of radioactive materials in quantities of concern (RAMQC) inside the decontamination building when authorized by the Executive Director. The following link to an electronic map of the facility's general location is provided as a public courtesy and is not part of the notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.4425&lng=-103.063055&zoom=13&type=. For an exact location, refer to the application. The TCEQ Executive Director has completed the technical review of the amendment and supporting documents and has prepared a draft license. The draft license, if approved, would refine and add detail to the conditions under which the land disposal facility must operate with regard to existing authorized receipt of wastes and does not change the type or concentration limits of wastes to be received. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements. The license amendment, the Executive Director's technical summary, and the amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews Public Library in Andrews, Texas.

PUBLIC COMMENT/PUBLIC MEETING. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the amendment. The TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the applications/amendments or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

EXECUTIVE DIRECTOR ACTION. The amendment is subject to Commission rules which direct the Executive Director to act on behalf of the Commission and provide authority to the Executive Director to issue final approval of the application for amendment after consideration of all timely comments submitted on the application.

MAILING LIST. If you submit public comments or a request for reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license or permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html within 10 days from the date of this notice or 10 days from the date of publication in the *Texas Register,* whichever is later.

AGENCY CONTACTS AND INFORMATION. If you need more information about this license application or the licensing process, please call the TCEQ Public Education Program, toll free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Further information may also be obtained from WCS at the address stated above or by calling Mr. Jay B. Cartwright at (432) 525-8500.

TRD-201404814
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 15, 2014

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 **November 24, 2014.** 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 November 24, 2014.** 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: GarCo Manufacturing, LLC dba GARCO MANUFACTURING aka Garcia Manufacturing; DOCKET NUMBER: 2014-0202-AIR-E; TCEQ ID NUMBER: RN106714843; LOCATION: 4101 Barbers Hill Road, Crosby, Harris County; TYPE OF FACILITY: surface coating; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §106.6(b) and §106.433(7)(A) and Permit By Rule Registration Number 110013, by failing to comply with certified emission rates; PENALTY: $1,312; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Jai Ambica Corporation dba Seagoville Chevron; DOCKET NUMBER: 2013-1479-PST-E; TCEQ ID NUMBER:

RN102965811; LOCATION: 1001 North Highway 175, Seagoville, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A), by failing to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.602(a), by failing to designate at least one Class C operator who would be present at the station during hours of operation; 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; and THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system; PENALTY: $16,607; STAFF ATTORNEY: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: MYKAWA ENTERPRISE, INC. dba Crown Mart; DOCKET NUMBER: 2012-0550-PST-E; TCEQ ID NUMBER: RN102058146; LOCATION: 6402 Mykawa Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10, by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,100; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201404811
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 14, 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 **November 24, 2014.** 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 November 24, 2014.** 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: BAY RIDGE CHRISTIAN COLLEGE; DOCKET NUMBER: 2014-0015-PWS-E; TCEQ ID NUMBER: RN101221935; LOCATION: 3626 Farm-to-Market Road 2919, Kendleton, Fort Bend County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect annual nitrate samples and provide the results to the executive director; 30 TAC §290.107(c)(1) and (e), by failing to collect the triennial synthetic organic chemical contaminants (method 5) samples and provide the results to the executive director; 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A), by failing to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive result on a routine sample, and by failing to provide public notification regarding the failure to sample raw groundwater sources; 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, and by failing to submit to the TCEQ a copy of the annual CCR and certification that the CCR had been distributed to the customers of the facility and that the information in the CCR was correct and consistent with the compliance monitoring data; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay all annual Public Health Service fees and associated late fees for the TCEQ Financial Administration Account Number 90790077; PENALTY: $780; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Chez Eugene Weaver; DOCKET NUMBER: 2013-2087-LII-E; TCEQ ID NUMBER: RN106525082; LOCATION: 4720 South Fannin Street, Amarillo, Randall County; TYPE OF FACILITY: performs landscaping work; RULES VIOLATED: TWC, §37.003; Texas Occupational Code, §1903.251 and 30 TAC §30.5(a), by failing to obtain an irrigator license prior to installing an irrigation system; PENALTY: $958; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: Jack Vanover and Rhonda C. Vanover d/b/a Seven Estates; DOCKET NUMBER: 2014-0110-PWS-E; TCEQ ID NUM-

BER: RN102679305; LOCATION: number 3 Private Road 7355, one and one-half miles south of Wolfforth, off Farm-to-Market Road 179, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 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 1st of each year and by failing to submit to the executive director by July 1st of each year a copy of the annual CCR and certification that the CCR was distributed to the facility customers and the information in the CCR is correct and consistent with compliance monitoring date; 30 TAC §290.110(e)(4)(A) and (f)(3) and TCEQ AO Docket Number 2011-1390-PWS-E Ordering Provisions Numbers 2.a.iii. and 2.c., 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 each quarter; 30 TAC §290.106(e) and TCEQ AO Docket Number 2011-1390-PWS-E Ordering Provisions Numbers 2.a.i. and 2.a.ii., by failing to provide results of quarterly nitrate and fluoride sampling to the executive director; 30 TAC §290.107(e) and TCEQ AO Docket Number 2011-1390-PWS-E Ordering Provisions Numbers 2.a.i. and 2.a.ii, by failing to provide the results of annual volatile organic contaminants sampling to the executive director; 30 TAC §290.106(e), by failing to provide the results of triennial metal sampling to the executive director; 30 TAC §290.108(e) and TCEQ AO Docket Number 2011-1390-PWS-E Ordering Provisions Numbers 2.a.i. and 2.a.ii, by failing to provide the results of annual radionuclide sampling to the executive director; 30 TAC §290.107(e), by failing to provide the results of six-year synthetic organic chemical contaminants sampling to the executive director; 30 TAC §290.106(c)(6) and (e), by failing to collect nitrate samples and provide the results to the executive director; and 30 TAC §290.113(c) and (e) and TCEQ AO Docket Number 2011-1390-PWS-E Ordering Provisions Numbers 2.a.i. and 2.a.ii., by failing to collect Stage 1 Disinfectant by-product samples and provide the results to the executive director; PENALTY: $2,805; STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(4) COMPANY: William Bradley d/b/a Bradley Services; DOCKET NUMBER: 2013-2055-MLM-E; TCEQ ID NUMBER: RN106601065; LOCATION: 8970 Highway 163 South, Unit N, Ozona, Crockett County; TYPE OF FACILITY: trailer repair operation; RULES VIOLATED: TWC, §26.121 and 30 TAC §330.15(a) and (c), by failing to prevent the discharge of industrial waste and industrial wastewater into or adjacent to water in the state and by failing to prevent the unauthorized disposal of industrial waste and wastewater without the written authorization of the commission; and 40 Code of Federal Regulations §262.11 and 30 TAC §70.104(b)(1), by failing to conduct a hazardous waste determination on the waste generated at the facility; PENALTY: $4,200; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201404812
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: October 14, 2014

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Notice of Water Quality Applications

The following notices were issued on October 3, 2014, through October 10, 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

U.S. STEEL TUBULAR PRODUCTS INC which operates its Tubular Processing Houston Operations, a facility that produces modified tube and pipe products from purchased materials, has applied for a major amendment with renewal to Texas Pollutant Discharge Elimination (TPDES) Permit No. WQ0003540000 to authorize changing the frequency of conducting stormwater inspections from monthly to quarterly and the removal of the following from the permit: 1) the authorization to discharge hydrostatic test water and previously monitored effluent (treated domestic wastewater with a daily average flow not to exceed 18,000 gallons per day (gpd) via internal Outfall 201) via Outfall 002, 2) internal Outfall 201 (including the authorization to discharge treated domestic wastewater and the limitations and monitoring requirements), 3) the authorization to discharge hydrostatic test water via Outfalls 003, 004, 005, and 006, 4) the monitoring requirements for total aluminum at Outfall 001, 5) the monitoring requirements for total aluminum and total zinc and the water quality-based effluent limits for total copper and cyanide at Outfall 003, 6) the monitoring requirements for total aluminum and the water quality-based effluent limits for total copper at Outfall 004, 7) the monitoring requirements for total aluminum and total silver and the water quality based effluent limits for total copper at Outfall 005; and 8) the daily average effluent limitations for total copper and cyanide at Outfall 001. The existing permit authorizes the discharge of: cooling tower wastewater, hydrostatic test water, vehicle wash water, and stormwater at an intermittent and flow-variable rate via Outfall 001; hydrostatic test water, stormwater and previously monitored effluent (treated domestic wastewater at a daily average flow rate not to exceed 18,000 gpd, internal Outfall 201) on an intermittent and flow-variable basis via Outfall 002; hydrostatic test water and stormwater on an intermittent and flow-variable basis via Outfalls 003, 004, 005, and 006. The draft permit authorizes the discharge of: cooling tower wastewater, hydrostatic test water, vehicle wash water, and stormwater at an intermittent and flow-variable rate via Outfall 001 and stormwater on an intermittent and flow-variable basis via Outfalls 002, 003, 004, 005, and 006. The facility is located at 9393 Sheldon Road, at the intersection of Sheldon Road and U.S. Highway 90, approximately four miles north of the City of Channelview, Harris County, Texas 77049.

CITY OF GONZALES has applied for a renewal of TCEQ Permit No. WQ0004467000, which authorizes the land application of sewage sludge for beneficial use on 45.4 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located on the north side of County Road 488, approximately 0.2 mile north of the intersection of County Road 488 and Farm-to-Market Road 532, and approximately 2.5 miles northeast of the City of Gonzales, in Gonzales County, Texas 78629.

CITY OF ABILENE has applied for a renewal of and major amendment to its existing TPDES Permit No. WQ0010334004 to authorize a discharge of treated domestic wastewater at an annual average flow not to exceed 7,000,000 gallons per day via a new outfall, Outfall 003. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 18,000,000 gallons per day via Outfall 001 and an annual average flow not to exceed 4,000,000 gallons per day via Outfall 002. The current permit authorizes surface disposal of sewage sludge on 64 acres and the use of treated domestic wastewater to irrigate 1,960 acres off-site and an additional 335 acres

of on-site properties. The only change to the existing permit requested via this amendment is the proposed new Outfall 003. The facility is located at 19000 County Road 309, Abilene, approximately 1.5 miles north of the intersection of State Highway 351 and County Road 309 and five miles northeast of the intersection of Interstate Highway 20 and State Highway 351 in Jones County, Texas 79601. The sludge treatment works are located within the wastewater treatment facility and the sludge disposal site is located adjacent to and northeast of the wastewater treatment facility.

CITY OF BYERS has applied for a renewal of TPDES Permit No. WQ0010890001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 43,000 gallons per day. The facility is located approximately 400 feet east of Byers City Lake in the City of Byers and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79 in Clay County, Texas 76357.

CITY OF SPRINGLAKE has applied for a renewal of TCEQ Permit No. WQ0011016001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 22,000 gallons per day via surface irrigation of 125 acres of non-public access agricultural land. The wastewater treatment facility and disposal site are located approximately 1,000 feet south of U.S. Highway 70 and approximately 0.5 mile west of the City of Springlake in Lamb County, Texas 79082.

EL DORADO UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011302001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located at 8243 Greens Road, immediately south of and adjacent to Garners Bayou, approximately 0.5 mile east of Old Humble Road crossing of Garners Bayou and two miles east of U.S. Highway 59 in Harris County, Texas 77396.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012070001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 63,000 gallons per day. The facility is located at 14910 Aldine Westfield Road, Houston in Harris County, Texas 77032.

ALDINE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012070002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 13800 Chrisman Road, Houston in Harris County, Texas 77039.

CITY OF JOAQUIN has applied for a renewal of TPDES Permit No. WQ0012718001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 137,000 gallons per day. The facility is located approximately 2,800 feet east of North Chalk Street on Faulkville Road and approximately 2,700 feet northeast of the intersection of Jackson Street and U.S. Highway 84 in the City of Joaquin in Shelby County, Texas 75954.

LA JOYA INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013523014, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 13,500 gallons per day. The facility is located at 6401 North Abram Road, in Hidalgo County, Texas 78574.

DRIPPING SPRINGS INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0013748002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day (GPD) from Plant "A", and 9,000 gallons per day (GPD) from Plant "B". The combined flow for disposal from Wastewater Treatment Plants "A" and "B" shall not exceed 25,000 gallons per day via public access subsurface drip irrigation with a minimum area of 166,835 square feet. The wastewater treatment facility and disposal site are located approximately 3,800 feet north and 8,800 feet west of the intersection of State Highway 12 and U.S. Highway 290, in Hays County, Texas 78620. The wastewater treatment facility and disposal site are located in the drainage basin of Onion Creek in Segment No. 1427 of the Colorado River Basin. This permit will not authorize a discharge of pollutants into waters in the State.

CORIX UTILITIES TEXAS INC has applied for a renewal of TPDES Permit No. WQ0014296001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 230,000 gallons per day. The facility is located at 1062 County Road 2509, Lometa, south of Santa Fe Lake, on the north side of Lampasas County Road 2509, approximately 0.9 mile west of the intersection of Lampasas County Road 2509 and U.S. Highway 183 in Lampasas County, Texas 76853.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 400 has applied for a renewal of TPDES Permit No. WQ0014419001 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 0.7 mile east of the intersection of Wilson Road and Beltway 8 in Harris County, Texas 77396.

CITY OF ARCHER CITY has applied for a renewal of TPDES Permit No. WQ0014549001, which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 40,000 gallons per day. The facility is located at 614 West South Street, Archer City in Archer County, Texas 76351.

LTR UTILITY LLC has applied for a renewal of TCEQ Permit No. WQ0014848001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 34.5 acres. This permit will not authorize a discharge of pollutants into waters in the state. The wastewater treatment facility and disposal site will be located approximately 1,940 feet northeast of the intersection of Rod and Gun Club Road and Siesta Shores Drive, on the west side of Siesta Shores Drive in Travis County, Texas 78669.

SABINE RIVER AUTHORITY OF TEXAS has applied for a new permit TPDES Permit No. WQ0015223001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 8,235 gallons per day. The facility is located approximately 1.43 miles northeast of the intersection of Farm-to-Market Road 3121 and State Highway 21, in Sabine County, Texas 75948.

FAYETTE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014985001 which authorizes the discharge of treated filter backwash effluent from a water treatment plant at a daily average flow not to exceed 25,000 gallons per day. The facility is located at 3327 State Highway 159, La Grange in Fayette County, Texas 78945.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0010243001 issued to Harris County Water Control and Improvement District No. 50 to change the five-day biochemical oxygen demand effluent limits to five-day carbonaceous biochemical oxygen demand effluent limits. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 540,000 gallons per day. The facility is located at 1122 Cedar Lane, northeast of the intersection of Cedar Lane and Hickory Ridge Drive,

one mile northwest of the intersection of State Highway 146 (Bayport Boulevard) and State Highway NASA Road 1 (NASA Parkway) in Harris County, Texas 77586.

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-201404813
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 15, 2014

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 14-045 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to reflect that the state has implemented its recovery audit contractor (RAC) program and has a RAC contract in place. The proposed amendment is effective October 1, 2014.

The proposed amendment is estimated to have no effect on state or federal budgets.

To obtain copies of the proposed amendment, interested parties may contact Meghan Young, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6238; by facsimile at (512) 730-7472; or by e-mail at meghan.young@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-201404803
Jack Stick
Chief Counsel
Texas Health and Human Services Commission
Filed: October 13, 2014

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Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC) Chapter 289 for the noted action. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

NEW LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
San Antonio	Jawad Z. Shaikh, M.D.	L06668	San Antonio	00	09/19/14
Throughout Tx	Versa Integrity Group Inc.	L06669	Houston	00	09/25/14
Throughout Tx	Methodist Health Centers dba Houston Methodist Willowbrook Hospital	L06670	Houston	00	09/26/14
Throughout Tx	Jacobra Energy Services L.L.C.	L06667	Jacksonville	00	09/18/14
Throughout Tx	Pro Inspection Inc.	L06666	Odessa	00	09/18/14

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Allen	Texas Health Presbyterian Hospital Allen	L05765	Allen	26	09/23/14
Arlington	Heartplace P.A.	L06336	Arlington	06	09/22/14
Austin	Freescale Semiconductor Inc.	L05347	Austin	10	09/26/14
Austin	Tri County Clinical dba Seton Heart Institute	L06598	Austin	02	09/25/14
Austin	Central Texas Medical Specialists P.L.L.C. dba Austin Cancer Centers	L06618	Austin	01	09/29/14
Beaumont	Advanced Cardiovascular Specialists L.L.P.	L05512	Beaumont	19	09/24/14
Beaumont	Cardiac Imaging Inc.	L06565	Beaumont	03	09/26/14
Bedford	Texas Health Harris Methodist Hospital Hurst Euless Bedford	L02303	Bedford	40	09/25/14
Bedford	Mid-Cities Cardiac Care Center P.L.L.C.	L06641	Bedford	01	09/19/14
Benbrook	Weatherford International L.L.C.	L04286	Benbrook	105	09/30/14
Burleson	Heartplace P.A.	L05883	Burleson	14	09/18/14
Comanche	Comanche County Medical Center Company dba Comanche County Medical Center	L06200	Comanche	09	09/24/14
Coppell	Logistics Systems Incorporated	L06337	Coppell	03	09/16/14
Coppell	Logistics Systems Incorporated	L06337	Coppell	04	09/30/14

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Cypress	North Cypress Medical Center Operating Co., L.L.C. dba North Cypress Medical Center	L06020	Cypress	29	09/18/14
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	200	09/16/14
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	201	09/29/14
Dallas	Cardinal Health	L02048	Dallas	148	09/17/14
Dallas	North Texas Heart Center P.A.	L04608	Dallas	40	09/16/14
Denton	Texas Oncology P.A. dba Texas Cancer Center Denton	L05815	Denton	12	09/17/14
El Paso	Tenet Hospitals Limited dba Providence Memorial Hospital	L02353	El Paso	117	09/30/14
Flower Mound	Texas Oncology P.A.	L05526	Flower Mound	27	09/16/14
Fort Worth	Tx. Health Harris Methodist Hospital Ft. Worth	L01837	Fort Worth	143	09/24/14
Garland	DMS Health Technologies, Inc.	L05594	Garland	24	09/24/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	196	09/24/14
Houston	Memorial Hermann Health System dba Memorial Hermann Southwest Hospital	L00439	Houston	197	09/29/14
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	154	09/25/14
Houston	Memorial Hermann Health System dba Memorial Hermann Memorial City Medical Center	L01168	Houston	150	09/24/14
Houston	Memorial Hermann Health System dba Memorial Hermann Hospital The Woodlands	L03772	Houston	114	09/26/14
Houston	CHCA Womans Hospital L.P. dba The Womans Hospital of Texas	L04834	Houston	18	09/17/14
Houston	Houston Northwest Operating Company L.L.C. dba Houston Northwest Medical Center	L06190	Houston	23	09/23/14
Houston	Oncology Consultants P.A.	L06339	Houston	05	09/17/14
La Porte	Braskem America Inc.	L06292	La Porte	06	09/29/14
Lubbock	University Medical Center	L04719	Lubbock	135	09/18/14
Paris	Essent PRMC L.P. dba Paris Regional Medical Center	L03199	Paris	57	09/23/14
Rockdale	Rockdale Blackhawk L.L.C. dba Little River Healthcare	L06092	Rockdale	08	09/19/14
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	217	09/29/14
San Antonio	M M Ontiveros M.D., P.A.	L05675	San Antonio	12	09/23/14
San Antonio	Jawad Z. Shaikh, M.D.	L06668	San Antonio	00	09/19/14
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	52	09/18/14
Texarkana	Texarkana PET/CT Imaging Institute L.P.	L05495	Texarkana	13	09/19/14
Texas City	Valero Refining Company	L02578	Texas City	38	09/26/14
Texas City	Blanchard Refining Company L.L.C.	L06526	Texas City	03	09/26/14
The Woodlands	Woodlands-North Houston Heart Associates	L04253	The Woodlands	34	09/30/14
Throughout Tx	Desert NDT L.L.C. dba Midwest Inspection Services	L06462	Abilene	22	09/18/14
Throughout Tx	Agrium US Inc.	L02772	Borger	21	09/18/14
Throughout Tx	NDE Solutions L.L.C.	L05879	Bryan	34	09/18/14
Throughout Tx	Nondestructive & Visual Inspection L.L.C.	L06162	Carthage	14	09/17/14
Throughout Tx	Tapco International Inc. dba Tapco Enpro International	L04990	Channelview	32	09/30/14
Throughout Tx	NE Time L.L.C.	L06590	Corpus Christi	01	09/26/14

AMENDMENTS TO EXISTING LICENSES ISSUED (continued):

Throughout Tx	H & H X-Ray Services Inc.	L02516	Flint	90	09/30/14
Throughout Tx	Paradigm Consultants Inc.	L04875	Houston	12	09/26/14
Throughout Tx	IRISNDT Inc.	L06435	Houston	12	09/18/14
Throughout Tx	Baker Hughes Oilfield Operations Inc.	L06453	Houston	13	09/18/14
Throughout Tx	Streamline Production Systems Inc.	L06658	Kountze	03	09/19/14
Throughout Tx	Industrial Nuclear Company Inc.	L04508	La Porte	19	09/30/14
Throughout Tx	Hi-Tech Testing Service Inc.	L05021	Longview	107	09/26/14
Throughout Tx	Weld Spec Inc.	L05426	Lumberton	102	09/17/14
Throughout Tx	Capitan Corporation	L05824	Midland	12	09/30/14
Throughout Tx	American X-Ray & Inspection Services Inc. dba A X I S Inc.	L05974	Midland	34	09/30/14
Throughout Tx	ACE NDT	L06595	Perryton	05	09/26/14
Throughout Tx	Braun Intertec Corporation	L06643	San Antonio	03	09/30/14
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	183	09/17/14
Throughout Tx	Apex Geoscience Inc.	L04929	Tyler	47	09/17/14
Trinity	East Texas Medical Center Trinity	L05392	Trinity	13	09/25/14
Tyler	East Texas Medical Center	L00977	Tyler	159	09/16/14
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	196	09/19/14
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	55	09/26/14
Waco	Hillcrest Baptist Medical Center	L00845	Waco	98	09/24/14
Waco	Providence Health Center	L01638	Waco	61	09/18/14
Winnie	Ecoserv Environmental Services L.L.C.	L04999	Winnie	14	09/25/14

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Beaumont	E I Dupont De Nemours & Co., Inc.	L00517	Beaumont	82	09/16/14
Borger	GPCH L.L.C. dba Golden Plains Community Hospital	L04369	Borger	18	09/19/14
Harlingen	Valley Coop Oil Mill	L02908	Harlingen	13	09/23/14
Lubbock	Radiation Oncology of the South Plains P.A. dba Lubbock Imaging Center	L05418	Lubbock	22	09/29/14
Throughout Tx	City of Brownwood	L05843	Brownwood	10	09/17/14
Throughout Tx	Texas A&M University	L05683	College Station	26	09/26/14
Throughout Tx	Comprobe Incorporated	L01667	Fort Worth	33	09/26/14
Throughout Tx	Endeavor Energy Resources L.P. dba Jones Wireline Services	L05085	Midland	09	09/25/14
Throughout Tx	Geotechnical Testing and Consulting L.L.C.	L05828	Plano	03	09/17/14

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amend-ment Number	Date of Action
Austin	Heart Clinic of Austin P.A.	L06238	Austin	02	09/26/14
Dallas	Animal Radiology Clinic P.L.L.C.	L03535	Dallas	25	09/26/14
Dallas	Cardiac Associates of Dallas	L05793	Dallas	06	09/29/14
Throughout Tx	Pro Inspection Inc.	L03906	Odessa	23	09/18/14
Throughout Tx	Trans-Environmental Services L.L.C.	L06495	Valley View	02	09/18/14

TRD-201404823
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: October 15, 2014

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Texas Department of Housing and Community Affairs

Amended 2014 HOME Single Family Programs Reservation System Notice of Funding Availability

HOME Investment Partnerships Program (HOME)

(1) Summary.

(a) The Texas Department of Housing and Community Affairs (Department) announces a Notice of Funding Availability (NOFA) of approximately $12,630,407 in HOME funds for single family housing programs under a Reservation System. These funds will be made available to HOME Reservation System Participants with a current Reservation System Participation (RSP) Agreement. The availability and use of these funds are subject to HOME Program rules including, but not limited to the Texas Administrative Code in Title 10, Part 1, Chapter 1, Administration, Chapter 20, the Single Family Programs Umbrella Rule, and Chapter 23, the Single Family HOME Program, as amended, concerning the state HOME rules (State HOME Rules), the federal HOME regulations governing the HOME program at 24 CFR Part 92, as amended (Federal HOME Rules), and Texas Government Code, Chapter 2306. Other federal regulations include but are not limited to, 24 CFR Parts 50 and 58 for environmental requirements, 24 CFR §84.42 and §85.36 for procurement conflict of interest, 24 CFR §135.38 for Section 3 requirements and, 24 CFR Part 5, Subpart A for fair housing. Applicants must familiarize themselves with all of the applicable state and federal rules that govern the HOME Program.

(b) Capitalized terms in this NOFA have the meanings defined herein or as defined in State HOME Rules and the Federal HOME Rules.

(2) Allocation of HOME Funds.

(a) The funds are made available through the Department's 2014 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD) as well as HOME Program Income and Deobligated Funds. In accordance with Texas Government Code, §2306.111(d-1), $5,406,236 under this NOFA is subject to the Regional Allocation Formula (RAF). Refer to the RAF tables located on the Department's website at www.tdhca.state.tx.us. The remaining $7,224,171 under this NOFA are legislative mandated set-asides, Program Income, or Deobligated Funds and therefore are not subject to the RAF.

(b) Approximately $5,406,236 in funds is available under this NOFA for non set-aside activities and subject to the RAF. Funds may be reserved for individual households for the following non set-aside Program Activities:

(i) Homeowner Rehabilitation Assistance (HRA). HRA provides funds for the rehabilitation or reconstruction of single family residence owned and occupied by eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.30 - 23.32.

(ii) Homebuyer Assistance (HBA). HBA provides down payment and closing cost assistance to eligible low-income Households. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter D, Homebuyer Assistance Program, §§23.40 - 23.42.

(iii) Tenant-Based Rental Assistance (TBRA). TBRA provides rental subsidies to eligible low-income Households. Assistance may include rental, security, and utility deposits. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter F, Tenant-Based Rental Assistance Program, §§23.60 - 23.62.

(c) Approximately $3,224,171 in funds available under this NOFA are not subject to the RAF and may be reserved for individual Households for the following set-aside Program Activities:

(i) Persons with Disabilities (PWD) Set-Aside. Approximately $1,224,171 is set aside to assist Persons with Disabilities and will be incorporated into the most current PWD set-aside Reservation balance to assist eligible Households.

(ii) Contract for Deed Conversion (CFDC) Set-Aside. Approximately $2,000,000 in set-aside funding will be incorporated into the most current CFDC set-aside Reservation balance to assist eligible Households until March 10, 2015, at which time Staff may reprogram $1,000,000 into other Single Family Activities if insufficient demand exists in this set-aside and funds are needed to satisfy excess demand of other Single Family HOME Program Activities. Any funds which have not been requested by June 1, 2015, may be reprogrammed out of the CFDC set-aside, if insufficient demand still exists and a need to satisfy excess demand in other Single Family HOME Program Activities.

CFDC provides funds for the conversion of a contract for deed to a traditional mortgage. Additional funds for rehabilitation or reconstruction are also available. Specific program guidelines can be found at 10 TAC Chapter 23, Single Family HOME Program, Subchapter E, Contract for Deed Conversion Program, §§23.50 - 23.52.

(iii) Disaster Relief Set-Aside. Approximately $1,000,000 in funding from Program Income and deobligated funds is set aside to provide HRA, HBA, or TBRA assistance to eligible Households affected directly by a disaster.

(d) Except as limited in this NOFA or by statute, the Department may reprogram funds at anytime to the Reservation System, or to administer directly.

(3) HOME funds subject to the RAF are reserved for HRA, HBA, and TBRA non set-aside HOME Activities. HOME funds subject to the RAF totaling $5,406,236 specified under §2(b) of this NOFA will be available under each Uniform State Service Region and by sub-region (Rural and Urban) beginning on Tuesday, September 9, 2014, at 10:00 a.m. CDT until Tuesday, October 14, 2014 at 9:00 a.m. CDT.

(a) On Wednesday, October 15, 2014, at 10:00 a.m. CDT any funds which have not been requested under §2(b) of this NOFA will collapse within each region and will be available by region until Tuesday, December 16, 2014, at 9:00 a.m. CST.

(b) On Wednesday, December 17, 2014, from 10:00 a.m. CST to 11:00 a.m. CST any funds which have not been requested under §2(b) of this NOFA will collapse together with an additional $4,000,000 of HOME Program Income and Deobligated Funds and will be made available first for households with reservation submissions received September 9, 2014 under §2(b) of this NOFA that were date and time recorded as accepted by the TDHCA HOME Contract Reservation System but exceeding the RAF sub-region funding limits.

(c) On Wednesday, December 17, 2014, at 1:00 p.m. CST any funds which have not been requested under §3(b) of this NOFA will be made available in all eligible areas statewide for any non set-aside activity under this NOFA as follows:

(i) HRA - 75% of remaining funds

(ii) HBA - 5% of remaining funds

(iii) TBRA - 20% of remaining funds

(d) On Tuesday, March 3, 2015, at 9:00 a.m. CST, the Department will collapse any remaining funds together and be made available statewide for HRA, HBA, and TBRA, until all funds are depleted, or the NOFA is closed.

(e) An alternative timeline and method of releasing funds may be implemented, at the Department's sole discretion.

(f) Updated balances for the Reservation System may be accessed online at www.tdhca.state.tx.us/home-division/home-reservation-summary.htm. Reservations of funds may be submitted at any time during the term of a RSP Agreement, as long as funds are available in the Reservation System. Participation in the Reservation System is not a guarantee of funding availability.

(4) Eligible and Prohibited Activities.

(a) Prohibited activities include those at 24 CFR §92.214 and in the State HOME Rules.

(b) Funds will not be eligible for use in a Participating Jurisdiction (PJ) except for Applications specifically requesting to access funds under the Persons with Disabilities set-aside.

For questions regarding this NOFA, please contact Sandy Garcia, HOME Program Administrator for the Single Family HOME Program Division, at (512) 475-1391 or via email at HOME@tdhca.state.tx.us.

TRD-201404816
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 15, 2014

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Texas Department of Insurance

Company Licensing

Application to change the name of MAJESTIC INSURANCE COMPANY to GREENPATH INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in San Francisco, California.

Application for admission to the State of Texas by MERIT HEALTH INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Skokie, Illinois.

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.

The Texas Department of Insurance published notice of an application to change the name of INDEPENDENCE CASUALTY AND SURETY COMPANY to VERTERRA INSURANCE COMPANY in the October 10, 2014, issue of the *Texas Register* (39 TexReg 8092). The company was incorrectly described as a foreign fire and/or casualty company. The company is in fact a domestic fire and/or casualty company.

TRD-201404820
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: October 15, 2014

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Texas Lottery Commission

Instant Game Number 1603 "$3,000 Spot"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1603 is "$3,000 SPOT". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1603 shall be $1.00 per Ticket.

1.2 Definitions in Instant Game No. 1603.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, DOLLAR BILL SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $40.00, $100 and $3,000.

D. Play Symbols caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1603 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
DOLLAR BILL SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$3,000	THR THOU

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00 or $100.

H. High-Tier Prize - A prize of $3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1603), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1603-0000001-001.

K. Pack - A Pack of "$3,000 SPOT" Instant Game Tickets contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Ticket 001 to 005 will be on the top page; Tickets 006 to 010 on the next page, etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$3,000 SPOT" Instant Game No. 1603 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "$3,000 SPOT" Instant Game is determined once the latex on the Ticket is scratched off to expose 10 (ten) Play Symbols. If a player reveals a "Dollar Bill" Play Symbol, the player wins the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 10 (ten) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut and have exactly 10 (ten) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 10 (ten) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to five (5) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play and Prize Symbol patterns. Two (2) Tickets have matching Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Non-winning Play Symbols will all be different.

E. Non-winning Prize Symbols will all be different.

2.3 Procedure for Claiming Prizes.

A. To claim a "$3,000 SPOT" Instant Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $40.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$3,000 SPOT" Instant Game prize of $3,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$3,000 SPOT" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$3,000 SPOT" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$3,000 SPOT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 11,040,000 Tickets in the Instant Game No. 1603. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1603 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,472,000	7.50
$2	736,000	15.00
$5	147,200	75.00
$10	73,600	150.00
$20	36,800	300.00
$40	27,600	400.00
$100	2,300	4,800.00
$3,000	46	240,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.42. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1603 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1603, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant

to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201404810
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 14, 2014

♦ ♦ ♦

Instant Game Number 1658 "$100,000 Extreme Green"

A. The name of Instant Game No. 1658 is "$100,000 EXTREME GREEN". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1658 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1658.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $200, $1,000, $5,000, $100,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, COIN SYMBOL and VAULT SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO.1658 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUN
$1,000	ONE THOU
$5,000	FIV THOU
$100,000	100 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FIFTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX

37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
COIN SYMBOL	DOUBLE
VAULT SYMBOL	WIN10X

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $200.

H. High-Tier Prize - A prize of $1,000, $5,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1658), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1658-0000001-001.

K. Pack - A Pack of "$100,000 EXTREME GREEN" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$100,000 EXTREME GREEN" Instant Game No. 1658 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "$100,000 EXTREME GREEN" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "COIN" Play Symbol, the player wins DOUBLE the prize for that symbol instantly. If a player reveals a "VAULT" Play Symbol, the player wins 10 TIMES the prize for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Texas Lottery Instant Game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $100,000, $5,000 and $1,000 will each appear at least once, except on Tickets winning more than fifteen (15) times.

E. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

H. No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

I. The "COIN" (double) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

J. The "COIN" (double) Play Symbol will win DOUBLE the prize for that Play Symbol and will win as per the prize structure.

K. The "COIN" (double) Play Symbol will never appear more than once on a Ticket.

L. The "COIN" (double) Play Symbol will never appear on a Non-Winning Ticket.

M. The "VAULT" (WIN10X) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

N. The "VAULT" (WIN10X) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

O. The "VAULT" (WIN10X) Play Symbol will never appear more than once on a Ticket.

P. The "VAULT" (WIN10X) Play Symbol will never appear on a Non-Winning Ticket.

Q. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 5 and $5, 10 and $10, 15 and $15, 20 and $20, 50 and $50).

R. On all Tickets, a Prize Symbol will not appear more than four (4) times except as required by the prize structure to create multiple wins.

S. On Non-Winning Tickets, a WINNING NUMBERS Play Symbols will never match a YOUR NUMBERS Play Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "$100,000 EXTREME GREEN" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $200, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $200 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$100,000 EXTREME GREEN" Instant Game prize of $1,000, $5,000 or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$100,000 EXTREME GREEN" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$100,000 EXTREME GREEN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$100,000 EXTREME GREEN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,280,000 Tickets in the Instant Game No. 1658. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1658 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,140,800	7.26
$10	772,800	10.71
$20	294,400	28.13
$50	60,950	135.85
$100	15,548	532.54
$200	3,772	2,195.12
$1,000	897	9,230.77
$5,000	276	30,000.00
$100,000	12	690,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.62. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1658 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1658, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201404809
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 14, 2014

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Amendment Request for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an amendment request for an agreement for import for disposal of low-level radioactive waste from:

Xcel Energy-Monticello Nuclear Generating Plant (1-0045-02)

2807 West Co. Rd. 75

Monticello, Minnesota 55362-9637

The amendment request will be placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the amendment request are due to be received by November 4, 2014. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

Attn: Leigh Ing, Executive Director

333 Guadalupe St., #3-240

Austin, Texas 78701

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201404741
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: October 9, 2014

♦ ♦ ♦

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Grant of a Telecommunications Easement - Bastrop County

Approximately 1 Acre at Buescher State Park

In a meeting on November 6, 2014 the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement of approximately 1 acre for the installation of an underground telecommunications cable to the University of Texas M.D. Anderson Cancer Center crossing state park land at Buescher State Park in Bastrop County.

At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action.

The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.texas.gov or through the TPWD web site at tpwd.texas.gov.

TRD-201404738
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: October 8, 2014

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Public Utility Commission of Texas

Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On October 8, 2014, ALEC, LLC filed an application to amend service provider certificate of operating authority (SPCOA) Number 60803. ALEC, LLC seeks approval for a change in ownership/control, whereby ALEC will become an indirect wholly-owned subsidiary of MBS Holdings, Inc.

The Application: Application of ALEC, LLC for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 43507.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than October 31, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43507.

TRD-201404782
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2014

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Notice of Application for Amendment to a Service Provider Certificate of Operating Authority

On October 13, 2014, Comtel Services filed an application to amend service provider certificate of operating authority (SPCOA) Number 60093. Comtel Services seeks approval for a change in (1) ownership/control from Excalibur Telephone, Inc. d/b/a Comtel Services to Ruth Riza d/b/a Comtel Services; (2) provider type from facilities-based and resale telecommunications services to resale-only telecommunications services; and (3) service area from the entire state of Texas to Dallas and Tarrant Counties.

The Application: Application of Comtel Services for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 43531.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than October 31, 2014. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43531.

TRD-201404824
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 2014

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Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 6, 2014, for an amendment to certificated service area for a service area exception within Lipscomb County, Texas.

Docket Style and Number: Application of North Plains Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Lipscomb County, Docket Number 43465.

The Application: North Plains Electric Cooperative, Inc. filed an application for a service area boundary exception to allow North Plains to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 31, 2014, by mail at P. O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 43465.

TRD-201404779
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 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 October 6, 2014, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Industry 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 43479.

The Application: Industry Telephone Company (ITC) filed an application with the commission for revisions to its Local Exchange Tariff. ITC proposed an effective date of November 15, 2014. The estimated revenue increase to be recognized by the Applicant is $30,000 in gross annual intrastate revenues. The Applicant has 2,058 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 October 31, 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 October 31, 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 (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 43479.

TRD-201404781
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2014

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Public Notice of Workshop

Staff of the Public Utility Commission of Texas (commission) will conduct a workshop in Project No. 43506, *Review of Subsynchronous Oscillation Study Parameters in the ERCOT Region,* on Wednesday, November 19, 2014, at 9:30 a.m. The workshop will be held at the ERCOT offices, Room 206, 7620 Metro Center Drive, Austin, Texas 78744. An agenda will be filed in Central Records under this project number on Wednesday, November 12, 2014.

Questions concerning the workshop or this notice should be referred to Julia Harvey, Competitive Markets Division, at (512) 936-7371 or at julia.harvey@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 711.

TRD-201404780
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 10, 2014

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Sul Ross State University

Request for Proposals

RFP #15-002 - Consulting Services

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the development of an Advancement Program.

Project Summary: The Consultant will interview the University President, incoming Vice President Butch Worley, Karen Brown, and other staff involved in advancement, in order to assess the present state of the University's overall efforts. Consultant will also interview key players involved with the fundraising efforts of the Museum of the Big Bend, the Borderlands Research Institute, and the Center for Big Bend Studies. Consultant will benchmark Sul Ross against its peers in terms of fundraising results, budget, staffing, and other measures, and make recommendations going forward. Consultant will review the present structure and governing documents of the SRSU Support Organization, and make recommendations consistent with best practices nationwide. Consultant will review advancement services functions, such as alumni database management, prospect identification and management, gift receipting, and stewardship, and make recommendations for any improvements.

In accordance with the provisions of V.C.T.A. Government Code, §2254.028 (c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:00 p.m., Monday, November 10, 2014. A copy of the request for proposal packet is available upon request from Noe Hernandez, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-201404740
William Kibler
Executive Director
Sul Ross State University
Filed: October 9, 2014

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Texas Water Development Board

Applications for October 21, 2014

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73695, a request from the City of Wichita Falls, P.O. Box 1431, Wichita Falls, Texas 76307, received July 31, 2012, for a $33,545,000 loan and $252,597 in loan forgiveness from the Clean Water State Revolving Fund to finance planning, design and construction costs related to the development of an indirect, potable reuse system.

Project ID #62646, a request from the City of Laredo, 5816 Daugherty Avenue, Laredo, Texas 78041, received July 17, 2014, for a $5,500,000 loan from the Drinking Water State Revolving Fund to finance construction of a new elevated storage tank in the San Isidro subdivision.

TRD-201404804
Les Trobman
General Counsel
Texas Water Development Board
Filed: October 13, 2014

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

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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