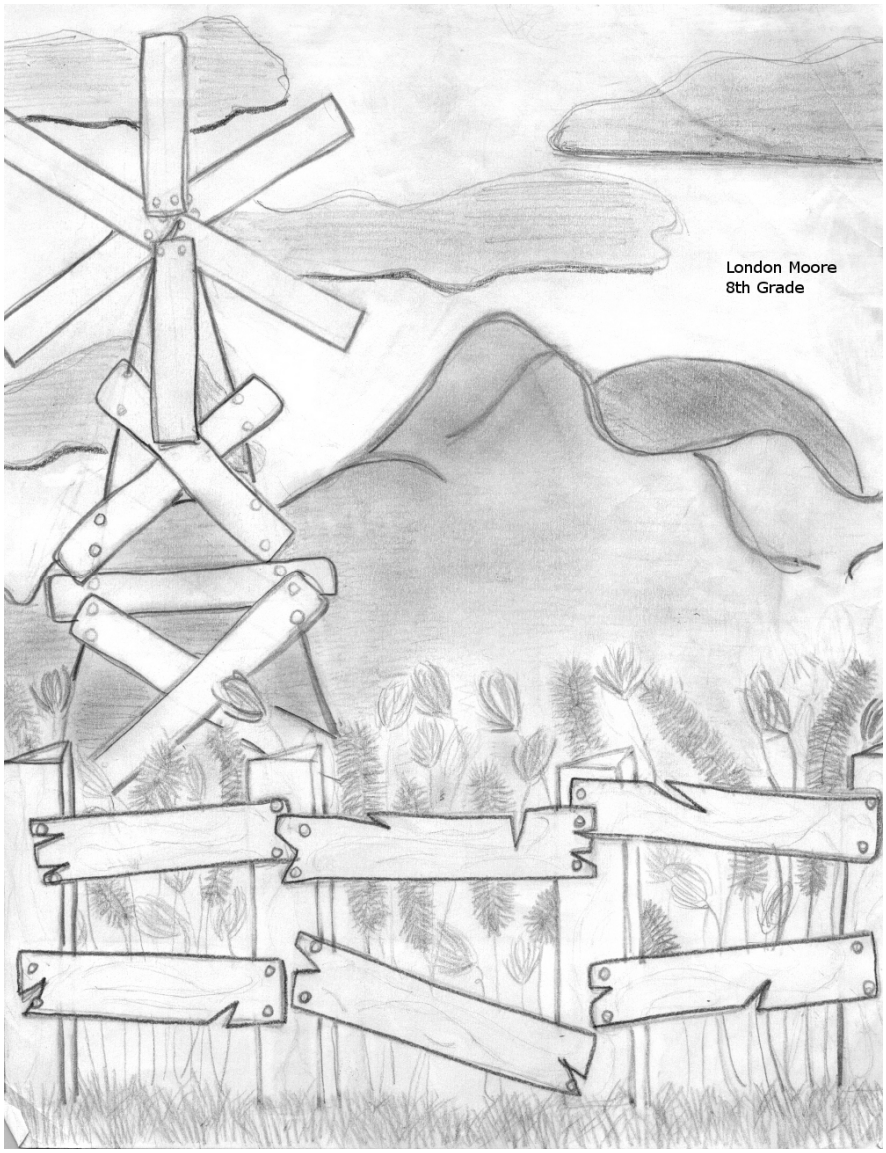
TEXAS REGISTER

Volume 41 Number 48 *November 25, 2016* *Pages 9197 – 9386*



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*.

***Texas Register*, (ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $297.00 ($438.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

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

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

TEXAS REGISTER

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

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

Secretary of State - Carlos H. Cascos

Director - Robert Sumners

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

IN THIS ISSUE

GOVERNOR

Appointments....9201

ATTORNEY GENERAL

Requests for Opinions....9203

PROPOSED RULES

TEXAS EDUCATION AGENCY

ADAPTATIONS FOR SPECIAL POPULATIONS

19 TAC §89.1050, §89.1055....9205

19 TAC §89.1195....9209

19 TAC §§89.1151, 89.1165, 89.1175, 89.1180, 89.1183, 89.1185, 89.1186, 89.1191 - 89.1193....9211

19 TAC §§89.1403, 89.1409, 89.1417....9217

CHARTERS

19 TAC §100.1010....9219

19 TAC §100.1033....9220

HEALTH AND SAFETY

19 TAC §103.1301....9225

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.350....9228

TEXAS COMMISSION ON FIRE PROTECTION

CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §403.5....9233

FEES

37 TAC §437.19....9234

TEXAS WORKFORCE COMMISSION

PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §§806.1 - 806.13....9237

40 TAC §806.1, §806.2....9237

40 TAC §806.21, §806.22....9238

40 TAC §806.31, §806.32....9239

40 TAC §806.41....9241

40 TAC §§806.51 - 806.53....9242

40 TAC §806.61, §806.62....9244

40 TAC §806.71....9244

40 TAC §806.81, §806.82....9245

40 TAC §806.91, §806.92....9245

TEXAS DEPARTMENT OF MOTOR VEHICLES

MOTOR CARRIERS

43 TAC §218.2....9248

43 TAC §218.13....9250

43 TAC §218.31, §218.32....9253

43 TAC §§218.52, 218.53, 218.56, 218.59 - 218.61....9254

WITHDRAWN RULES

COMMISSION ON STATE EMERGENCY COMMUNICATIONS

9-1-1 SERVICE--STANDARDS

1 TAC §251.14....9259

ADOPTED RULES

COMMISSION ON STATE EMERGENCY COMMUNICATIONS

9-1-1 SERVICE--STANDARDS

1 TAC §251.15....9261

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

1 TAC §358.431....9264

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

ADMINISTRATION

10 TAC §1.3....9264

10 TAC §1.21....9265

10 TAC §1.21....9265

10 TAC §1.302....9265

10 TAC §1.302....9266

10 TAC §1.303....9266

10 TAC §§1.401 - 1.409....9266

ENFORCEMENT

10 TAC §2.102....9269

10 TAC §2.201, §2.202....9269

10 TAC §§2.201 - 2.204....9269

COMMUNITY AFFAIRS PROGRAMS

10 TAC §§6.1 - 6.10....9276

10 TAC §§6.201 - 6.214....9284

10 TAC §§6.301 - 6.313....9290

10 TAC §§6.401 - 6.417....9295

HOMELESSNESS PROGRAMS

10 TAC §§7.1 - 7.14....9302

10 TAC §§7.1001 - 7.1005 9308

10 TAC §§7.2001 - 7.2006 9311

UNIFORM MULTIFAMILY RULES

10 TAC §10.614 9312

10 TAC §10.614 9312

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

16 TAC §24.21 9318

DEPARTMENT OF AGING AND DISABILITY SERVICES

DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

40 TAC §98.1, §98.2 9327

40 TAC §98.11 9331

40 TAC §98.62 9331

40 TAC §98.200 9334

TEXAS DEPARTMENT OF MOTOR VEHICLES

VEHICLE TITLES AND REGISTRATION

43 TAC §217.3 9335

43 TAC §§217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56 9336

43 TAC §§217.82, 217.84, 217.86 9336

43 TAC §217.103 9336

43 TAC §217.163 9337

43 TAC §217.9 9337

43 TAC §217.57 9339

TRANSFERRED RULES

Texas Higher Education Coordinating Board

Rule Transfer 9341

RULE REVIEW

Proposed Rule Reviews

Texas State Board of Plumbing Examiners 9343

Adopted Rule Reviews

Public Utility Commission of Texas 9344

TABLES AND GRAPHICS

....9349

IN ADDITION

Office of Consumer Credit Commissioner

Notice of Rate Ceilings 9351

Credit Union Department

Notice of Final Action Taken 9351

Texas Commission on Environmental Quality

Agreed Orders 9351

Combined Notice: Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit Proposed Permit Number: 138309 9354

Enforcement Orders 9355

Notice of Hearing 9357

Notice of Public Hearing 9358

Notice of Public Hearing 9358

Notice of Public Hearing 9359

Texas Ethics Commission

List of Late Filers 9360

Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2017 State of Texas Consolidated Plan: One-Year Action Plan 9360

Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations 9360

Texas Department of Licensing and Regulation

Public Notice - Dietitians Criminal Conviction Guidelines 9372

Texas Lottery Commission

Scratch Ticket Game Number 1823 "10X the Cash" 9374

Scratch Ticket Game Number 1824 "20X the Cash" 9378

Panhandle Regional Planning Commission

Legal Notice 9384

Public Utility Commission of Texas

Notice of Application to Amend a Service Provider Certificate of Operating Authority 9384

Notice of Application to Amend a Service Provider Certificate of Operating Authority 9384

Notice of Application to Amend Certificate of Convenience and Necessity 9384

Texas Department of Transportation

Request for Information - Toll Operations Division 9385

THE GOVERNOR

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

Appointments

Appointments for November 4, 2016

Appointed to the Office of Small Business Assistance Advisory Task Force for a term to expire June 14, 2017, Michael E. "Mike" Guyton of Mansfield (replacing William R. "Will" Newton, Jr. of Austin whose term expired).

Appointed to the Office of Small Business Assistance Advisory Task Force for a term to expire June 14, 2017, Tina C. Mims, Ph.D. of Little Elm (replacing Robert M. McKinley of San Antonio whose term expired).

Appointed to the Office of Small Business Assistance Advisory Task Force for a term to expire June 14, 2017, Jay S. Zeidman of Houston (replacing James A. "Jim" Broaddus of Austin whose term expired).

Appointments for November 7, 2016

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2017, Clayton P. Black of Stanton (Mr. Black is being reappointed).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2017, James J. "Jim" Jeffries of Georgetown (Mr. Jeffries is being reappointed).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2019, Alejandro "Alex" Sostre-Odio of San Antonio (replacing Patrick M. Carlson of Austin whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2019, Jamie L. Sanders Wickliffe of Midlothian (Ms. Wickliffe is being reappointed). Ms. Sanders is also being appointed as Presiding Officer with a term to expire at the pleasure of the Governor.

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2019, Joyce A. Yannuzzi of New Braunfels (replacing Jesus "Jesse" Barba, Jr. of McAllen whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2021, Ray "Chance" Bolton of Bee Cave (replacing Walker Rankin Beard of El Paso whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2021, Tony F. Pena of Lubbock (replacing Brian L. Padden of Austin whose term expired).

Appointed to the Texas Appraiser Licensing and Certification Board for a term to expire January 31, 2021, Martha Gayle Red of El Paso (replacing Laurie C. Fontana of Houston whose term expired).

Appointments for November 9, 2016

Appointed to the Texas State Board of Plumbing Examiners for a term to expire September 5, 2021, Milton R. Gutierrez of Fort Worth (replacing Thomas E. "Tom" Freeman of Huntsville who resigned).

Appointments for November 10, 2016

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2021, Dale G. Morton of Nacogdoches (replacing James E. "Jim" Hughes, Jr. of Jasper whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2021, John M. "Skip" Ogle of Tyler (replacing Karl "Keith" Drewery of Nacogdoches whose term expired).

Appointed to the Angelina and Neches River Authority Board of Directors for a term to expire September 5, 2021, Francis G. Spruiell of Center (replacing Dominick Benedict "Nick" Bruno, II of Jacksonville whose term expired).

Appointments for November 14, 2016

Appointed to the State Board for Educator Certification for a term to expire February 1, 2019, Tommy L. Coleman of Livingston (replacing Dawn C. Buckingham of Lakeway who resigned).

Appointed to the State Board for Educator Certification as a Non-Voting Member, for a term to expire February 1, 2017, Dale "Scott" Ridley, Ph.D. of Lubbock (replacing Grant W. Simpson, Jr. of Gainesville who resigned).

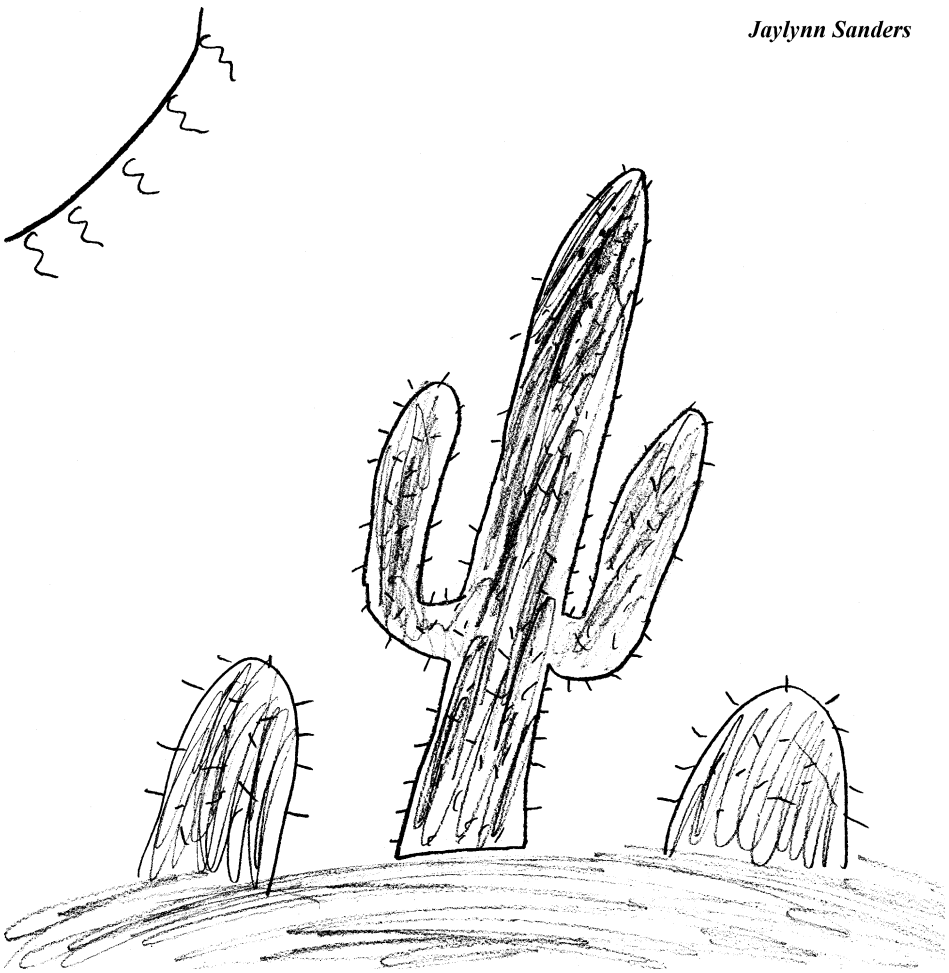
Appointed to the State Board for Educator Certification as a Non-Voting Member, for a term to expire February 1, 2021, Carlos O. Villagrana of Houston (pursuant to Education Code Sec. 21.033).

Greg Abbott, Governor

TRD-201605851

♦ ♦ ♦

Jaylynn Sanders



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-0140-KP

Requestor:

The Honorable Rodney W. Anderson

Brazos County Attorney

300 East 26th Street, Suite 1300

Bryan, Texas 77803

Re: Scope of residence homestead tax exemption in Tax Code section 11.13(l)(2)(B) (RQ-0140-KP)

Briefs requested by December 14, 2016

RQ-0141-KP

Requestor:

The Honorable Marco A. Montemayor

Webb County Attorney

1110 Washington Street, Suite 301

Laredo, Texas 78040

Re: Applicability of the International Energy Conservation Code to new school district building

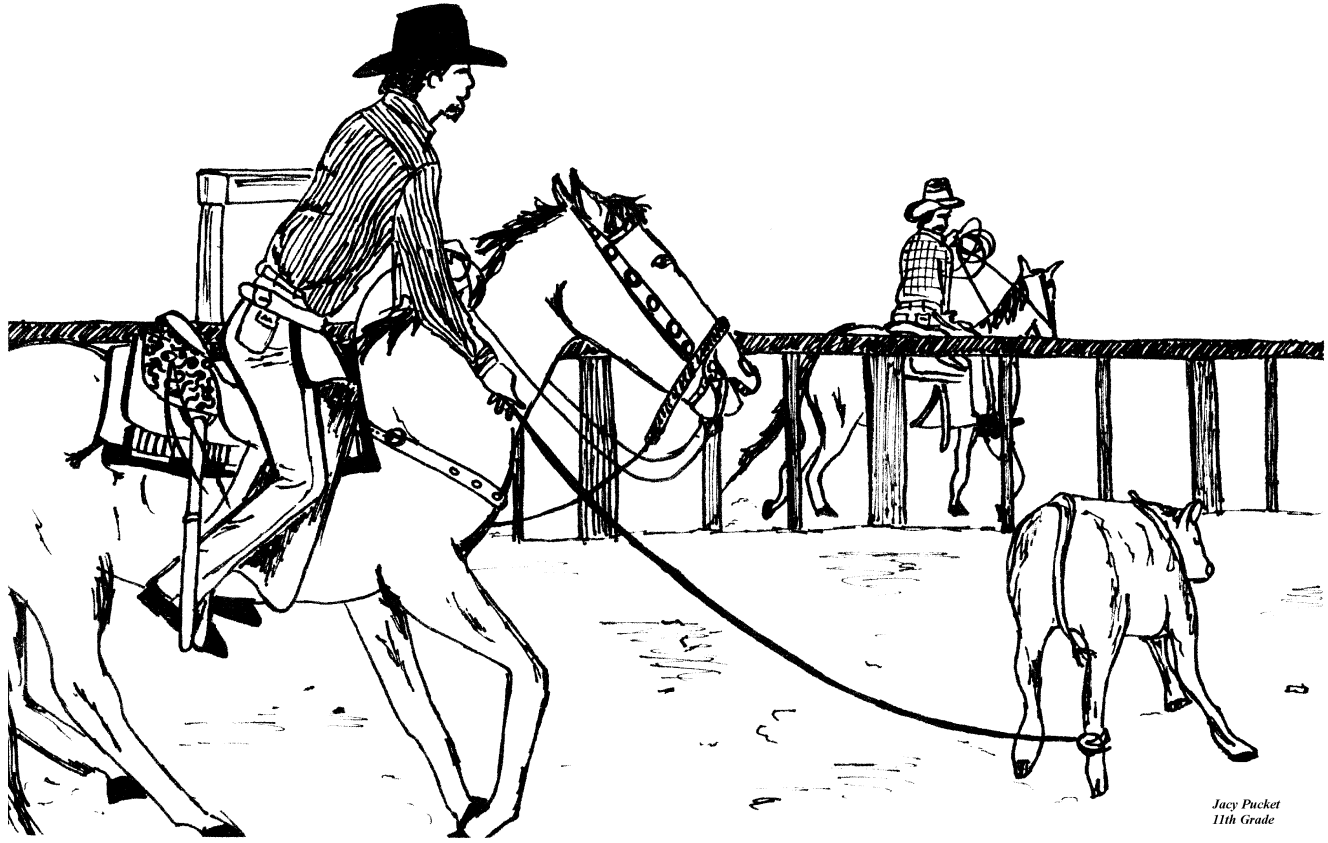
construction after November 1, 2016 (RQ-0141-KP)

Briefs requested by December 14, 2016

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

TRD-201605864
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: November 16, 2016

♦ ♦ ♦



Jacy Pucket
11th Grade

PROPOSED RULES

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

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

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendments to §§89.1050, 89.1055, and 89.1195, concerning special education services. The proposed amendments would modify procedures related to students' individualized education programs (IEPs), the content of students' IEPs, and special education complaints.

Senate Bill (SB) 1259, 84th Texas Legislature, Regular Session, 2015, amended special education requirements in the Texas Education Code (TEC), §29.005, Individualized Education Program. The changes specify that if a committee established under TEC, §29.005, is required to include a regular education teacher, the regular education teacher included must, to the extent practicable, be a teacher who is responsible for implementing a portion of the child's IEP. In addition, SB 1259 required that the written statement of the IEP must document the decisions of the committee with respect to issues discussed at each committee meeting and must include the date of the meeting; the name, position, and signature of each member participating in the meeting; and an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the committee. Finally, SB 1259 added language to specify that each member of the committee who disagrees with the IEP developed by the committee is entitled to include a statement of disagreement in the written statement of the program.

The proposed amendments to 19 TAC Chapter 89, Subchapter AA, Division 2, would implement the requirements of TEC, §29.005, as follows.

Section 89.1050, The Admission, Review, and Dismissal (ARD) Committee, would be amended to address the procedures when a member of a student's ARD committee disagrees with the proposed IEP.

Section 89.1055, Content of the Individualized Education Program (IEP), would be amended to include the new content requirements for a student's IEP as added by SB 1259.

The proposed amendment to 19 TAC Chapter 89, Subchapter AA, Division 7, would provide clarity and update the rule to comply with the requirements of the Individuals with Disabilities Education Act. Specifically, §89.1195, Special Education Complaint Resolution, would be amended to clarify timelines for TEA's receipt of a special education complaint.

The proposed amendments would have no procedural and reporting implications. The proposed amendments would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to provide constituents with clear and aligned state and federal requirements related to special education services. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.*

Public hearings to solicit testimony and input on the proposed rules will be held at 8:30 a.m. on December 8 and December 9, 2016, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at one of the hearings must sign in between 8:15 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearings should be directed to the Division of IDEA Support at (512) 463-9414.

DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §89.1050, §89.1055

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §29.001, which requires the Texas Education Agency to develop and modify as necessary a statewide plan that includes rules for the administration and funding of the delivery of services to children with disabilities in the state of Texas so that a free appropriate public education is available to all of those children between the ages of 3 and 21; and TEC, §29.005, as amended by Senate Bill 1259, 84th Texas Legislature, Regular Session, 2015, which requires a school district, before a child is enrolled in a special education program, to establish a committee composed of the persons required under 20 U.S.C. §1414(d), to develop the child's individualized education program (IEP) and establishes procedures for the committee and required components of the IEP.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §29.001 and §29.005, as amended by Senate Bill 1259, 84th Texas Legislature, Regular Session, 2015.

§89.1050. The Admission, Review, and Dismissal Committee.

(a) Each school district must establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full individual and initial evaluation is conducted pursuant to §89.1011 of this title (relating to Full Individual and Initial Evaluation). The ARD committee is the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.321. The school district is responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including the following:

(1) 34 CFR, §§300.320-300.325, and Texas Education Code (TEC), §29.005 (individualized education programs);

(2) 34 CFR, §§300.145-300.147 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.132, 300.138, and 300.139 (relating to the development and implementation of service plans for eligible students placed by parents in private school who have been designated to receive special education and related services);

(4) 34 CFR, §300.530 and §300.531, and TEC, §37.004 (disciplinary placement of students with disabilities);

(5) 34 CFR, §§300.302-300.306 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.114-300.117 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, §28.0212 (Junior High or Middle School Personal Graduation Plan);

(10) TEC, §28.0213 (Intensive Program of Instruction);

(11) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(12) TEC, §30.002 (Education for Children with Visual Impairments);

(13) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(14) TEC, §33.081 (Extracurricular Activities);

(15) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(16) TEC, §42.151 (Special Education).

(b) For a student from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§300.320-300.324, and the memorandum of understanding between the Texas Education Agency and the Department of Assistive and Rehabilitative Services. For students three years of age and older, school districts must develop an IEP.

(c) ARD committee membership.

(1) ARD committees must include the following:

(A) the parents of the student;

(B) not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment);

(C) not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student;

(D) a representative of the school district who:

(i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;

(ii) is knowledgeable about the general education curriculum; and

(iii) is knowledgeable about the availability of resources of the school district;

(E) an individual who can interpret the instructional implications of evaluation results, who may be a member of the committee described in subparagraphs (B)-(D) and (F) of this paragraph;

(F) at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate;

(G) whenever appropriate, the student with a disability;

(H) to the extent appropriate, with the consent of the parents or a student who has reached the age of majority, a representative of any participating agency that is likely to be responsible for providing or paying for transition services;

(I) a representative from career and technical education (CTE), preferably the teacher, when considering initial or continued placement of a student in CTE; and

(J) a professional staff member who is on the language proficiency assessment committee who may be a member of the committee described in subparagraphs (B) and (C) of this paragraph, if the student is identified as an English language learner.

(2) The special education teacher or special education provider that participates in the ARD committee meeting must be appropriately certified or licensed as required by 34 CFR, §300.18 and §300.156.

(3) If the student is:

(A) a student with a suspected or documented visual impairment, the ARD committee must include a teacher who is certified in the education of students with visual impairments;

(B) a student with a suspected or documented auditory impairment, the ARD committee must include a teacher who is certified in the education of students with auditory impairments; or

(C) a student with suspected or documented deaf-blindness, the ARD committee must include a teacher who is certified in the education of students with visual impairments and a teacher who is certified in the education of students with auditory impairments.

(4) An ARD committee member is not required to attend an ARD committee meeting if the conditions of either 34 CFR, §300.321(e)(1), regarding attendance, or 34 CFR, §300.321(e)(2), regarding excusal, have been met.

(d) The school district must take steps to ensure that one or both parents are present at each ARD committee meeting or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed upon time and place. Additionally, a school district must allow parents who cannot attend an ARD committee meeting to participate in the meeting through other methods such as through telephone calls or video conferencing. The school district must provide the parents with written notice of the ARD committee meeting that meets the requirements in 34 CFR, §300.322, at least five school days before the meeting unless the parents agree to a shorter timeframe.

(e) Upon receipt of a written request for an ARD committee meeting from a parent, the school district must:

(1) schedule and convene a meeting in accordance with the procedures in subsection (d) of this section; or

(2) within five school days, provide the parent with written notice explaining why the district refuses to convene a meeting.

(f) If the parent is unable to speak English, the school district must provide the parent with a written notice required under subsection (d) or (e)(2) of this section in the parent's native language, unless it is clearly not feasible to do so. If the parent's native language is not a written language, the school district must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

(g) All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a single opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. The ARD committee must schedule the reconvened meeting at a mutually agreed upon time and place. The opportunity to recess and reconvene is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense that may lead to a placement in a disciplinary alternative education program. The requirements of this subsection do not prohibit the ARD committee from recessing an ARD committee meeting for reasons other than the failure to reach mutual agreement about all required elements of an IEP.

(2) During the recess, the ARD committee members must consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons who may assist in enabling the ARD committee to reach mutual agreement.

(3) If a recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the school district must implement the IEP that it has determined to be appropriate for the student.

(4) Each member of the ARD committee who disagrees with the IEP developed by the ARD committee is entitled to include a statement of disagreement in the IEP. [~~When mutual agreement is not reached, a written statement of the basis for the disagreement must be included in the IEP. The parent who disagrees must be offered the opportunity to write his or her own statement of disagreement.~~]

(h) Whenever a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education to the student, the school district must provide prior written notice as required in 34 CFR, §300.503, including providing the notice in the parent's native language or other mode of communication. This notice must be provided to the parent at least five school days before the school district proposes or refuses the action unless the parent agrees to a shorter timeframe.

(i) If the student's parent is unable to speak English and the parent's native language is Spanish, the school district must provide a written copy or audio recording of the student's IEP translated into Spanish. If the student's parent is unable to speak English and the parent's native language is a language other than Spanish, the school district must make a good faith effort to provide a written copy or audio recording of the student's IEP translated into the parent's native language.

(1) For purposes of this subsection, a written copy of the student's IEP translated into Spanish or the parent's native language means that all of the text in the student's IEP in English is accurately translated into the target language in written form. The IEP translated into the target language must be a comparable rendition of the IEP in English and not a partial translation or summary of the IEP in English.

(2) For purposes of this subsection, an audio recording of the student's IEP translated into Spanish or the parent's native language means that all of the content in the student's IEP in English is orally translated into the target language and recorded with an audio device. A school district is not prohibited from providing the parent with an audio recording of an ARD committee meeting at which the parent was assisted by an interpreter as long as the audio recording provided to the parent contains an oral translation into the target language of all of the content in the student's IEP in English.

(3) If a parent's native language is not a written language, the school district must take steps to ensure that the student's IEP is translated orally or by other means to the parent in his or her native language or other mode of communication.

(4) Under 34 CFR, §300.322(f), a school district must give a parent a written copy of the student's IEP at no cost to the parent. A school district meets this requirement by providing a parent with a written copy of the student's IEP in English or by providing a parent with a written translation of the student's IEP in the parent's native language in accordance with paragraph (1) of this subsection.

(j) A school district must comply with the following for a student who is newly enrolled in the school district.

(1) When a student transfers to a new school district within the state in the same school year and the parents verify that the student was receiving special education services in the previous school district

or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(e), regarding the provision of special education services. The timeline for completing the requirements outlined in 34 CFR, §300.323(e)(1) or (2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(2) When a student transfers from a school district in another state in the same school year and the parents verify that the student was receiving special education services in the previous school district or the previous school district verifies in writing or by telephone that the student was receiving special education services, the new school district must meet the requirements of 34 CFR, §300.323(f), regarding the provision of special education services. If the new school district determines that an evaluation is necessary, the evaluation is considered a full individual and initial evaluation and must be completed within the timelines established by §89.1011(c) and (e) of this title. The timeline for completing the requirements in 34 CFR, §300.323(f)(2), if appropriate, is 30 calendar days from the date of the completion of the evaluation report. If the school district determines that an evaluation is not necessary, the timeline for completing the requirements outlined in 34 CFR, §300.323(f)(2), is 30 school days from the date the student is verified as being a student eligible for special education services.

(3) In accordance with TEC, §25.002, and 34 CFR, §300.323(g), the school district in which the student was previously enrolled must furnish the new school district with a copy of the student's records, including the student's special education records, not later than the 10th working day after the date a request for the information is received by the previous school district.

(k) All disciplinary actions regarding students with disabilities must be determined in accordance with 34 CFR, §§300.101(a) and 300.530-300.536; TEC, Chapter 37, Subchapter A; and §89.1053 of this title (relating to Procedures for Use of Restraint and Time-Out).

§89.1055. Content of the Individualized Education Program.

(a) The individualized education program (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability must comply with the requirements of 34 Code of Federal Regulations (CFR), §300.320 and §300.324.

(b) The IEP must include a statement of any individual appropriate and allowable accommodations in the administration of assessment instruments developed in accordance with Texas Education Code (TEC), §39.023(a)-(c), or districtwide assessments of student achievement (if the district administers such optional assessments) that are necessary to measure the academic achievement and functional performance of the student on the assessments. If the ARD committee determines that the student will not participate in a general statewide or districtwide assessment of student achievement (or part of an assessment), the IEP must include a statement explaining:

(1) why the student cannot participate in the general assessment; and

(2) why the particular alternate assessment selected is appropriate for the student.

(c) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services), then the IEP must identify which of the goals and objectives in the IEP will be addressed during ESY services.

(d) For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) must also meet the requirements of TEC, §30.002(e).

(e) For students eligible under §89.1040(c)(1) of this title (relating to Eligibility Criteria), the strategies described in this subsection must be considered, based on peer-reviewed, research-based educational programming practices to the extent practicable and, when needed, addressed in the IEP:

(1) extended educational programming (for example: extended day and/or extended school year services that consider the duration of programs/settings based on assessment of behavior, social skills, communication, academics, and self-help skills);

(2) daily schedules reflecting minimal unstructured time and active engagement in learning activities (for example: lunch, snack, and recess periods that provide flexibility within routines; adapt to individual skill levels; and assist with schedule changes, such as changes involving substitute teachers and pep rallies);

(3) in-home and community-based training or viable alternatives that assist the student with acquisition of social/behavioral skills (for example: strategies that facilitate maintenance and generalization of such skills from home to school, school to home, home to community, and school to community);

(4) positive behavior support strategies based on relevant information, for example:

(A) antecedent manipulation, replacement behaviors, reinforcement strategies, and data-based decisions; and

(B) a behavioral intervention plan developed from a functional behavioral assessment that uses current data related to target behaviors and addresses behavioral programming across home, school, and community-based settings;

(5) beginning at any age, consistent with subsection (h) of this section, futures planning for integrated living, work, community, and educational environments that considers skills necessary to function in current and post-secondary environments;

(6) parent/family training and support, provided by qualified personnel with experience in Autism Spectrum Disorders (ASD), that, for example:

(A) provides a family with skills necessary for a student to succeed in the home/community setting;

(B) includes information regarding resources (for example: parent support groups, workshops, videos, conferences, and materials designed to increase parent knowledge of specific teaching/management techniques related to the student's curriculum); and

(C) facilitates parental carryover of in-home training (for example: strategies for behavior management and developing structured home environments and/or communication training so that parents are active participants in promoting the continuity of interventions across all settings);

(7) suitable staff-to-student ratio appropriate to identified activities and as needed to achieve social/behavioral progress based on the student's developmental and learning level (acquisition, fluency, maintenance, generalization) that encourages work towards individual independence as determined by, for example:

(A) adaptive behavior evaluation results;

(B) behavioral accommodation needs across settings; and

(C) transitions within the school day;

(8) communication interventions, including language forms and functions that enhance effective communication across

settings (for example: augmentative, incidental, and naturalistic teaching);

(9) social skills supports and strategies based on social skills assessment/curriculum and provided across settings (for example: trained peer facilitators (e.g., circle of friends), video modeling, social stories, and role playing);

(10) professional educator/staff support (for example: training provided to personnel who work with the student to assure the correct implementation of techniques and strategies described in the IEP); and

(11) teaching strategies based on peer reviewed, research-based practices for students with ASD (for example: those associated with discrete-trial training, visual supports, applied behavior analysis, structured learning, augmentative communication, or social skills training).

(f) If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (e) of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

(g) If the ARD committee determines that a behavior improvement plan or a behavioral intervention plan is appropriate for a student, that plan must be included as part of the student's IEP and provided to each teacher with responsibility for educating the student.

(h) In accordance with TEC, §29.011 and §29.0111, not later than when a student reaches 14 years of age, the ARD committee must consider, and if appropriate, address the following issues in the IEP:

(1) appropriate student involvement in the student's transition to life outside the public school system;

(2) if the student is younger than 18 years of age, appropriate parental involvement in the student's transition;

(3) if the student is at least 18 years of age, appropriate parental involvement in the student's transition, if the parent is invited to participate by the student or the school district in which the student is enrolled;

(4) any postsecondary education options;

(5) a functional vocational evaluation;

(6) employment goals and objectives;

(7) if the student is at least 18 years of age, the availability of age-appropriate instructional environments;

(8) independent living goals and objectives; and

(9) appropriate circumstances for referring a student or the student's parents to a governmental agency for services.

(i) In accordance with 34 CFR, §300.320(b), beginning not later than the first IEP to be in effect when the student turns 16 years of age, or younger if determined appropriate by the ARD committee, and updated annually thereafter, the IEP must include the following:

(1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) the transition services, including courses of study, needed to assist the student in reaching the postsecondary goals developed under paragraph (1) of this subsection.

(j) The written statement of the IEP must document the decisions of the ARD committee with respect to issues discussed at each ARD committee meeting. The written statement must also include:

(1) the date of the meeting;

(2) the name, position, and signature of each member participating in the meeting; and

(3) an indication of whether the child's parents, the adult student, if applicable, and the administrator agreed or disagreed with the decisions of the ARD 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.

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605800
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

DIVISION 7. DISPUTE RESOLUTION

19 TAC §89.1195

STATUTORY AUTHORITY. The amendment is proposed under 34 Code of Federal Regulations, §300.152, which outlines time limits and minimum procedures that must be included in a state education agency's complaint procedures.

CROSS REFERENCE TO STATUTE. The amendment implements 34 Code of Federal Regulations, §300.152.

§89.1195. Special Education Complaint Resolution.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.151, the Texas Education Agency (TEA) has established a complaint resolution process that provides for the investigation and issuance of findings regarding alleged violations of Part B of the Individuals with Disabilities Education Act (IDEA).

(b) A complaint may be filed with the TEA by any individual or organization and must:

(1) be in writing;

(2) include the signature and contact information for the complainant;

(3) contain a statement that a public education agency has violated Part B of the IDEA; 34 CFR, §300.1 et seq.; or a state special education statute or administrative rule;

(4) include the facts upon which the complaint is based;

(5) if alleging violations with respect to a specific student, include:

(A) the name and address of the residence of the student;

(B) the name of the school the student is attending;

(C) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Act (42 United

States Code, §11434a(2)), available contact information for the student and the name of the school the student is attending;

(D) a description of the nature of the problem of the student, including facts relating to the problem; and

(E) a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed;

(6) allege a violation that occurred not more than one calendar year prior to the date the complaint is received; and

(7) be forwarded to the public education agency that is the subject of the complaint at the same time that the complaint is filed with the TEA.

(c) A complaint must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by persons or organizations filing a complaint. The form is available on request from the TEA and is also available on the TEA website. The complaint timeline will commence the next business day after the day on which the TEA receives the complaint.

(d) If a complaint does not meet the requirements outlined in subsection (b) of this section, the TEA must notify the complainant of the deficiencies in the complaint.

(e) Upon receipt of a complaint that meets the requirements of this section, the TEA must initiate an investigation to determine whether the public education agency is in compliance with applicable law and regulations in accordance with the following procedures.

(1) The TEA must send written notification to the parties acknowledging receipt of a complaint.

(A) The notification must include:

(i) the alleged violations that will be investigated;

(ii) alternative procedures available to address allegations in the complaint that are outside of the scope of Part B of the IDEA; 34 CFR, §300.1, et seq.; or a state special education statute or administrative rule;

(iii) a statement that the public education agency may, at its discretion, investigate the alleged violations and propose a resolution of the complaint;

(iv) a statement that the parties have the opportunity to resolve the complaint through mediation in accordance with the procedures in §89.1193 of this title (relating to Special Education Mediation);

(v) a timeline for the public education agency to submit:

(I) documentation demonstrating that the complaint has been resolved; or

(II) a written response to the complaint and all documentation and information requested by the TEA;

(vi) a statement that the complainant may submit additional information about the allegations in the complaint, either orally or in writing within a timeline specified by the TEA, and may provide a copy of any additional information to the public education agency to assist the parties in resolving the dispute at the local level; and

(vii) a statement that the TEA may grant extensions of the timeline for a party to submit information under clause (v) or (vi) of this subparagraph at the request of either party.

(B) The public education agency must provide the TEA with a written response to the complaint and all documentation and information requested by the TEA. The public education agency must forward its response to the parent who filed the complaint at the same time that the response is provided to the TEA. The public education agency may also provide the parent with a copy of the documentation and information requested by the TEA. If the complaint was filed by an individual other than the student's parent, the public education agency must forward a copy of the response to that individual only if written parental consent has been provided to the public education agency.

(2) If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the TEA must:

(A) set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and

(B) resolve any issue in the complaint that is not a part of the due process hearing.

(3) If an issue raised in the complaint has previously been decided in a due process hearing involving the same parties, the TEA must inform the complainant that the due process hearing decision is binding.

(4) The TEA has 60 calendar days after a valid written complaint is received to carry out the investigation and to resolve the complaint. The TEA may extend the time limit beyond 60 calendar days if exceptional circumstances, as determined by the TEA, exist with respect to a particular complaint. The parties will be notified in writing by the TEA of the exceptional circumstances, if applicable, and the extended time limit. The time limit may also be extended if the parties agree to extend it in order to engage in mediation pursuant to §89.1193 of this title or other alternative means of dispute resolution. In accordance with the Texas Education Code, §29.010(e), the TEA must expedite a complaint alleging that a public education agency has refused to enroll a student eligible for special education and related services or that otherwise indicates a need for expedited resolution, as determined by the TEA.

(5) During the course of the investigation, the TEA must:

(A) conduct an investigation of the complaint that must include a complete review of all relevant documentation and that may include interviews with appropriate individuals and an independent on-site investigation, if necessary;

(B) consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards;

(C) make a determination of compliance or noncompliance on each issue in the complaint based upon the facts and applicable law, regulations, or standards and issue a written report of findings of fact and conclusions, including reasons for the decision, and any corrective actions that are required, including the time period within which each action must be taken;

(D) review any evidence that the public education agency has corrected noncompliance on its own initiative;

(E) ensure that the TEA's final decision is effectively implemented, if needed, through technical assistance activities, negotiations, and corrective actions to achieve compliance; and

(F) in the case of a complaint filed by an individual other than the student's parent, provide a copy of the written report only if written parental consent has been provided to the TEA.

(6) In resolving a complaint in which a failure to provide appropriate services is found, the TEA must address:

(A) the failure to provide appropriate services, including corrective action appropriate to address the needs of the student, including compensatory services, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(B) appropriate future provision of services for all students with disabilities.

(7) In accordance with 34 CFR, §300.600(e), the public education agency must complete all required corrective actions as soon as possible, and in no case later than one year after the TEA's identification of the noncompliance. A public education agency's failure to correct the identified noncompliance within the one-year timeline will result in an additional finding of noncompliance under 34 CFR, §300.600(e), and may result in sanctions against the public education agency in accordance with §89.1076 of this title (relating to Interventions and Sanctions).

(f) If a party to a complaint believes that the TEA's written report includes an error that is material to the determination in the report, the party may submit a signed, written request for reconsideration to the TEA by mail, hand-delivery, or facsimile within 15 calendar days of the date of the report. The party's reconsideration request must identify the asserted error and include any documentation to support the claim. The party filing a reconsideration request must forward a copy of the request to the other party at the same time that the request is filed with the TEA. The other party may respond to the reconsideration request within five calendar days of the date on which the TEA received the request. The TEA will consider the reconsideration request and provide a written response to the parties within 45 calendar days of receipt of the request. The filing of a reconsideration request must not delay a public education agency's implementation of any corrective actions required by the TEA.

(g) In accordance with 34 CFR, §300.151, the TEA's complaint resolution procedures must be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605801
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

19 TAC §§89.1151, 89.1165, 89.1175, 89.1180, 89.1183, 89.1185, 89.1186, 89.1191 - 89.1193

The Texas Education Agency (TEA) proposes amendments to §§89.1151, 89.1165, 89.1175, 89.1180, 89.1183, 89.1185, 89.1186, 89.1191, and 89.1193, and new §89.1192, concerning special education services. The proposed amendments and new section would add a rule regarding a court's award of attorneys' fees under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, *et seq.;* clarify the circumstances under which a party may request and the procedural rules that apply to an expedited due process hearing requested under IDEA; amend a rule regarding the assignment of mediators to mediations requested under IDEA; and make minor technical corrections and clarifications.

IDEA and its implementing regulations provide that parents and public agencies may request mediation and due process hearings when disputes arise regarding the identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education to the child. IDEA requires TEA, as the state educational agency, to offer mediation as a dispute resolution mechanism and to conduct due process hearings and have procedural safeguards in effect to ensure that each public agency in the state meets the IDEA requirements.

Chapter 89, Division 7, would be revised to clarify dispute resolution rules as follows.

Section 89.1151, Special Education Due Process Hearings, would be amended to make minor technical changes to use plain language and for consistency.

Section 89.1165, Request for Special Education Due Process Hearing, would be amended to make a minor technical change to use plain language.

Section 89.1175, Representation in Special Education Due Process Hearings, would be amended to make minor technical changes to use plain language.

Section 89.1180, Prehearing Procedures, would be amended to make minor technical changes to use plain language and for consistency.

Section 89.1183, Resolution Process, would be amended to make minor technical changes to use plain language.

Section 89.1185, Hearing Procedures, would be amended to make minor technical changes to use plain language.

Section 89.1186, Extensions of Time, would be amended to make minor technical changes to use plain language.

Section 89.1191, Special Rule for Expedited Due Process Hearings, would be amended to clarify that an expedited due process hearing may be requested by a parent to appeal a disciplinary placement decision or a manifestation determination or by a school district to appeal a current placement decision that is substantially likely to result in injury to the child or others. The rule would also be amended to clarify that the timelines that apply to expedited due process hearings are mandatory and that requests for expedited due process hearings may not be amended or challenged as insufficient. Finally, the rule would be amended to make minor technical edits.

New §89.1192, Attorneys' Fees, would be added to clarify that, consistent with IDEA, a court may award attorneys' fees to the prevailing party in a due process hearing under certain circumstances.

Section 89.1193, Special Education Mediation, would be amended to align with IDEA and inform the public by rule of the considerations TEA may use in assigning a mediator. The amendment would clarify that when special education mediation is requested, TEA will assign a mediator on a random, rotational, or other impartial basis. Additional new language would explain that if the parties have a preference for a particular mediator, the parties must advise TEA of their preference and must not contact a mediator to discuss the mediator's availability to conduct the mediation. The amendment would also explain that TEA will

make the final assignment decision based on relevant program concerns, including availability, the need for equitable rotation, and travel considerations. New language would be added to state that TEA will provide the parties with written notice of the specific mediator selected to conduct the mediation. The rule would also be amended to make minor technical changes.

The proposed revisions would have no new procedural and reporting implications. The proposed revisions would have no new locally maintained paperwork requirements.

FISCAL NOTE. Von Byer, general counsel, has determined that for the first five-year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new section. There is no effect on local economy for the first five years that the proposed amendments and new section are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Byer has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the amendments and new section will be to further clarify the special education dispute resolution system for students, parents, and school districts. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.*

Public hearings to solicit testimony and input on the proposed rules will be held at 8:30 a.m. on December 8 and December 9, 2016, in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Anyone wishing to testify at one of the hearings must sign in between 8:15 a.m. and 9:00 a.m. on the day of the respective hearing. Each hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearings should be directed to the Division of IDEA Support at (512) 463-9414.

STATUTORY AUTHORITY. The amendments and new section are proposed under the Texas Education Code (TEC), §29.001, which requires the Texas Education Agency to develop and modify as necessary a statewide plan that includes rules for the administration and funding of the delivery of services to children with disabilities in the state of Texas so that a free appropriate public education (FAPE) is available to all of those children between the ages of 3 and 21; TEC, §29.0162, which gives the commissioner authority to adopt rules related to the qualification of non-attorney representatives at due process hearings; 34 Code of Federal Regulations (CFR), §300.100, which requires a state to submit a plan to the Secretary of Education that provides assurances that the state has policies and procedures in effect to ensure that it meets the conditions in 34 CFR, §§300.101-300.176; 34 CFR, §300.121, which requires that a state have procedural safeguards in effect to ensure that each public agency in the state meets the dispute resolution requirements in 34 CFR, §§300.500-300.536, and also requires that children with disabilities and their parents be afforded those procedural safeguards; 34 CFR, §300.506, which requires a state to establish and implement procedures to allow parents and public education agencies who are in dispute regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child the opportunity to resolve the dispute through a mediation process; 34 CFR, §300.507, which provides that a state has the authority to establish an explicit time limitation for filing a request for a hearing; 34 CFR, §300.508, which mandates that a state must implement procedures to require either party in a due process hearing to provide a copy of the request for a hearing to the other party; 34 CFR, §300.511, which requires a state to ensure that parents and public education agencies have the opportunity for an impartial due process hearing conducted by the state when they are involved in a dispute regarding the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child; 34 CFR, §300.512, which allows for state law determination of whether parties may be represented at due process hearings by non-attorney representatives; 34 CFR, §300.517, which allows a court the discretion to award reasonable attorneys' fees to the prevailing party in any action or proceeding brought under IDEA and describes the circumstances for making the award; and 34 CFR, §300.532, which provides that a state may establish procedural rules governing expedited due process hearings.

CROSS REFERENCE TO STATUTE. The amendments and new section implement the Texas Education Code, §29.001 and §29.0162, and 34 Code of Federal Regulations, §§300.100, 300.121, 300.506-300.508, 300.511, 300.512, 300.517, and 300.532.

§89.1151. Special Education Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in 34 Code of Federal Regulations (CFR), §300.507 and §300.508.

(b) The Texas Education Agency will [~~shall~~] implement a one-tier system of hearings. The proceedings in hearings will [~~shall~~] be governed by the provisions of 34 CFR, §§300.507-300.515 and 300.532, if applicable, and this division.

(c) A parent or public education agency must request a hearing within one year of the date the parent or public education agency [~~complainant~~] knew or should have known about the alleged action that serves as the basis for the request.

(d) The timeline described in subsection (c) of this section does not apply to a parent if the parent was prevented from filing a request for a due process hearing [~~complaint~~] due to:

(1) specific misrepresentations by the public education agency that it had resolved the problem forming the basis of the request for a hearing [~~due process complaint~~]; or

(2) the public education agency's withholding of information from the parent that was required by 34 CFR, §300.1, et seq. to be provided to the parent.

§89.1165. Request for Special Education Due Process Hearing.

(a) A request for a due process hearing (due process complaint) must be in writing and must be filed with the Texas Education

Agency (TEA). The request may be filed by mail, hand-delivery, or facsimile.

(b) The party filing a request for a hearing must forward a copy of the request to the non-filing party at the same time that the request is filed with the TEA. The timelines applicable to hearings will [~~shall~~] commence the calendar day after the non-filing party receives the request. Unless rebutted, it will be presumed that the non-filing party received the request on the date it is sent to the parties by the TEA.

(c) The request for a hearing must include:

(1) the name of the child;

(2) the address of the residence of the child;

(3) the name of the school the child is attending;

(4) in the case of a homeless child or youth (within the meaning of §725(2) of the McKinney-Vento Homeless Assistance Act (42 United States Code §11434a(2)), available contact information for the child, and the name of the school the child is attending;

(5) a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(6) a proposed resolution of the problem to the extent known and available to the party at the time.

(d) A party may not have a hearing until the party files a request for a hearing that meets the requirements of subsection (c) of this section.

(e) The TEA has developed a model form that may be used by parents and public education agencies to request a hearing. The form is available on request from the TEA and on the TEA website.

§89.1175. Representation in Special Education Due Process Hearings.

(a) A party to a due process hearing may represent himself or herself or be represented by:

(1) an attorney who is licensed in the State of Texas; or

(2) an individual who is not an attorney licensed in the State of Texas but who has special knowledge or training with respect to problems of children with disabilities and who satisfies the qualifications of this section.

(b) A party who wishes to be represented by an individual who is not an attorney licensed in the State of Texas must file a written authorization with the hearing officer promptly after filing the request for a due process hearing or promptly after retaining the services of the non-attorney representative. The party must forward a copy of the written authorization to the opposing party at the same time that the written authorization is filed with the hearing officer.

(c) The written authorization must [~~shall~~] be on the form provided in this subsection.
Figure: 19 TAC §89.1175(c) (No change.)

(d) The written authorization must include the non-attorney representative's name and contact information and a description of the non-attorney representative's:

(1) special knowledge or training with respect to problems of children with disabilities;

(2) knowledge of the rules and procedures that apply to due process hearings, including those in 34 Code of Federal Regulations, §§300.507-300.515 and 300.532, if applicable, and this division;

(3) knowledge of federal and state special education laws, regulations, and rules; and

(4) educational background.

(e) The written authorization must state the party's acknowledgment of the following:

(1) the non-attorney representative has been given full authority to act on the party's behalf with respect to the hearing;

(2) the actions or omissions by the non-attorney representative are binding on the party, as if the party had taken or omitted those actions directly;

(3) documents are deemed to be served on the party if served on the non-attorney representative;

(4) communications between the party and a non-attorney representative are not generally protected by the attorney-client privilege and may be subject to disclosure during the hearing proceeding;

(5) neither federal nor state special education laws provide for the recovery of fees for the services of a non-attorney representative; and

(6) it is the party's responsibility to notify the hearing officer and the opposing party of any change in the status of the authorization and that the provisions of the authorization will [~~shall~~] remain in effect until the party notifies the hearing officer and the opposing party of the party's revocation of the authorization.

(f) The written authorization must be signed and dated by the party.

(g) An individual is prohibited from being a party's representative under subsection (a)(2) of this section if the individual has prior employment experience with the school district and the school district raises an objection to the individual serving as a representative based on the individual's prior employment experience. No other objections to a party's representation by a non-attorney are permitted under this section.

(h) Upon receipt of a written authorization filed under this section, the hearing officer must [~~shall~~] promptly determine whether the non-attorney representative is qualified to represent the party in the hearing and must [~~shall~~] notify the parties in writing of the determination. A hearing officer's determination is final and not subject to review or appeal.

(i) A non-attorney representative may not file pleadings or other documents on behalf of a party, present statements and arguments on behalf of a party, examine and cross-examine witnesses, offer and introduce evidence, object to the introduction of evidence and testimony, or engage in other activities in a representative capacity unless the hearing officer has reviewed a written authorization filed under this section and determined that the non-attorney representative is qualified to represent the party in the hearing.

(j) In accordance with the Texas Education Code, §38.022, a school district may require an attorney or a non-attorney representative who enters a school campus to display his or her driver's license or another form of government-issued identification. A school district may also verify whether the representative is a registered sex offender and may apply a policy adopted by its board of trustees regarding the action to be taken when a visitor to a school campus is identified as a sex offender.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a due process hearing, the hearing officer will forward to the parties a scheduling order which sets

the time, date, and location of the hearing and contains the timelines for the following actions, as applicable:

(1) Response to Request for a Due Process Hearing (34 Code of Federal Regulations (CFR), §300.508(f));

(2) Resolution Meeting (34 CFR, §300.510(a));

(3) Contesting Sufficiency of the Request for a Hearing [~~Complaint~~] (34 CFR, §300.508(d));

(4) Resolution Period (34 CFR, §300.510(b));

(5) Five-Business Day Disclosure (34 CFR, §300.512(a)(3)); and

(6) the date by which the final decision of the hearing officer must [~~shall~~] be issued (34 CFR, §300.515 and §300.532(c)(2)).

(b) The hearing officer must [~~shall~~] schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference must [~~shall~~] be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(c) The prehearing conference must [~~shall~~] be recorded and transcribed by a court reporter, who will [~~shall~~] promptly prepare a transcript of the prehearing conference for the hearing officer with copies to each of the parties.

(d) The purpose of the prehearing conference will [~~shall~~] be to consider any of the following:

(1) specifying issues as set forth in the request for a hearing [~~due process complaint~~];

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitations on the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(e) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties a written prehearing order which confirms and/or identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be adjudicated at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer must [~~shall~~] be issued; and

(6) other information determined to be relevant by the hearing officer.

(f) No pleadings, other than the request for a hearing, and the response to the request for a hearing [~~Response to Complaint~~], if applicable, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a hearing must [~~shall~~] be filed with the hearing officer. Copies of all pleadings must [~~shall~~] be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney or a non-attorney determined by the hearing officer to be qualified to represent the party, all copies must [~~shall~~] be sent to the attorney of record or non-attorney representative, as applicable. Facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this subsection.

(g) Discovery methods are [~~shall be~~] limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions must [~~shall~~] be issued in the name of the Texas Education Agency.

(h) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) that the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) that the party anticipates calling to testify at the hearing.

(i) A party may request a dismissal or nonsuit of a hearing to the same extent that a plaintiff may dismiss or nonsuit a case under the Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent hearing involving the same or substantially similar issues as those alleged in the original hearing, then, absent good cause or unless the parties agree otherwise, only evidence disclosed and witnesses identified by the Disclosure Deadline in the original hearing may be introduced at the subsequent hearing.

§89.1183. Resolution Process.

(a) Within 15 calendar days of receiving notice of the parent's request for a due process hearing, the public education agency must [~~shall~~] convene a resolution meeting with the parent and the relevant members of the admission, review, and dismissal committee who have specific knowledge of the facts identified in the request. The resolution meeting:

(1) must include a representative of the public education agency who has decision-making authority on behalf of the public education agency; and

(2) may not include an attorney of the public education agency unless the parent is accompanied by an attorney.

(b) The purpose of the resolution meeting is for the parent of the child to discuss the hearing issues and the facts that form the basis of the request for a hearing so that the public education agency has the opportunity to resolve the dispute.

(c) The resolution meeting described in subsections (a) and (b) of this section need not be held if:

(1) the parent and the public education agency agree in writing to waive the meeting; or

(2) the parent and the public education agency agree to use the mediation process described in §89.1193 of this title (relating to Special Education Mediation).

(d) The parent and the public education agency determine the relevant members of the admission, review, and dismissal committee to attend the resolution meeting.

(e) The parties may enter into a confidentiality agreement as part of their resolution agreement. There is nothing in this division, however, that requires the participants in a resolution meeting to keep the discussion confidential or make a confidentiality agreement a condition of a parent's participation in the resolution meeting.

(f) If the public education agency has not resolved the hearing issues to the satisfaction of the parent within 30 calendar days of the receipt of the request for a hearing, the hearing may occur.

(g) Except as provided in subsection (k) of this section, the timeline for issuing a final decision begins at the expiration of this 30-day resolution period.

(h) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding subsections (f) and (g) of this section, the failure of the parent filing a request for a hearing to participate in the resolution meeting delays the timelines for the resolution process and the hearing until the meeting is held.

(i) If the public education agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented in accordance with the procedures in 34 Code of Federal Regulations, §300.322(d)), the public education agency may at the conclusion of the 30-day resolution period, request that a hearing officer dismiss the parent's request for a hearing.

(j) If the public education agency fails to hold the resolution meeting within 15 calendar days of receiving the parent's request for a hearing or fails to participate in the resolution meeting, the parent may seek the intervention of the hearing officer to begin the hearing timeline.

(k) Notwithstanding subsections (f) and (g) of this section, the timeline for issuing a final decision starts the calendar day after one of the following events:

(1) both parties agree in writing to waive the resolution meeting;

(2) after either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; or

(3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public education agency withdraws from the mediation process.

(l) If a resolution to the dispute is reached at the resolution meeting, the parties must [~~shall~~] execute a legally binding agreement that is:

(1) signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency; and

(2) enforceable in any state or federal court of competent jurisdiction.

(m) If the parties execute an agreement pursuant to subsection (l) of this section, a party may void the agreement within three business days of the agreement's execution.

§89.1185. Hearing Procedures.

(a) The hearing officer must [~~shall~~] afford the parties an opportunity for hearing within the timelines set forth in 34 Code of Federal Regulations (CFR), §300.515 and §300.532, as applicable, unless the hearing officer, at the request of either party, grants an extension of time, except that the timelines for expedited hearings cannot be extended.

(b) Each hearing must [~~shall~~] be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance must [~~shall~~] comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument must [~~shall~~] be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 CFR, §§300.507-300.514 or 300.532, or this division, the Texas Rules of Civil Procedure will [~~shall~~] govern the proceedings at the hearing and the Texas Rules of Evidence will [~~shall~~] govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information concerning any student who is not the subject of the hearing must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room will [~~shall~~] be at the hearing officer's discretion.

(i) Hearings conducted under this division must [~~shall~~] be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing must [~~shall~~] be recorded and transcribed by a court reporter, who will [~~shall~~] promptly prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties.

(k) Filing of post-hearing briefs will [~~shall~~] be permitted only upon order of the hearing officer.

(l) The hearing officer must [~~shall~~] issue a final decision, signed and dated, no later than 45 calendar days after the expiration of the 30-day resolution period under 34 CFR, §300.510(b), and §89.1183 of this title (relating to Resolution Process) or the adjusted time periods described in 34 CFR, §300.510(c), and §89.1183 of this title after a request for a due process hearing is received by the Texas Education Agency (TEA), unless the deadline for a final decision has been extended by the hearing officer as provided in §89.1186 of this title (relating to Extensions of Time). A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision must [~~shall~~] be mailed to each party by the hearing officer on the day that the decision is issued. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer must [~~shall~~] include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the public education agency unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the public education agency the appropriate information in the request for a hearing in accordance with 34 CFR, §300.508(b).

(n) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 34 CFR, §300.516.

(o) A public education agency must [~~shall~~] implement any decision of the hearing officer that is, at least in part, adverse to the public education agency within the timeframe prescribed by the hearing officer or, if there is no timeframe prescribed by the hearing officer, within ten school days after the date the decision was rendered. In accordance with 34 CFR, §300.518(d), a public education agency must implement a hearing officer's decision during the pendency of an appeal, except that the public education agency may withhold reimbursement for past expenses ordered by the hearing officer.

(p) In accordance with 34 CFR, §300.152(c)(3), a parent may file a complaint with the TEA alleging that a public education agency has failed to implement a hearing officer's decision.

§89.1186. Extensions of Time.

(a) A hearing officer may grant extensions of time for good cause beyond the time period specified in §89.1185(l) of this title (relating to Hearing Procedures) at the request of either party. A hearing officer must [~~shall~~] not solicit extension requests, grant extensions on his or her own behalf, or unilaterally issue extensions for any reason. Any extension must [~~shall~~] be granted to a specific date, and the reason for the extension must be documented in a written order of the hearing officer and provided to each of the parties.

(b) A hearing officer may grant a request for an extension only after fully considering the cumulative impact of the following factors:

(1) whether the delay will positively contribute to, or adversely affect, the child's educational interest or well-being;

(2) the need of a party for additional time to prepare or present the party's position at the hearing;

(3) any adverse financial or other detrimental consequences likely to be suffered by a party in the event of delay; and

(4) whether there has already been a delay in the proceeding through the actions of one of the parties.

§89.1191. Special Rule for Expedited Due Process Hearings.

A parent who disagrees with any decision regarding a child's placement under 34 Code of Federal Regulations (CFR), §300.530 and §300.531, or a manifestation determination under 34 CFR, §300.530(e), or a school district that believes that maintaining the current placement of a child is substantially likely to result in injury to the child or others, may appeal the decision by requesting an [~~An~~] expedited due process hearing [~~requested by a party~~] under 34 CFR [~~Code of Federal Regulations (CFR)~~], §300.532. An expedited due process hearing will[~~, shall~~] be governed by the same procedural rules as are applicable to due process hearings generally, except that:

(1) the hearing must occur within 20 school days of the date the request for a due process hearing is filed;

(2) the hearing officer must make a decision within 10 [~~ten~~] school days after the hearing;

(3) unless the parents and the school district agree in writing to waive the resolution meeting required by 34 CFR, §300.532(c)(3)(i), or to use the mediation process described in 34 CFR, §300.506, the resolution meeting must occur within seven calendar days of the receipt of the request for a hearing;

(4) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the request for a hearing; [~~and~~]

(5) the hearing officer must [~~shall~~] not grant any extensions of time or grant permission for the hearing to proceed under the timelines that apply to hearings involving non-disciplinary matters; and[~~.~~]

(6) the provisions in 34 CFR, §300.508(d), do not apply.

§89.1192. Attorneys' Fees.

In an action or proceeding brought under this division, a court, in its discretion, may award reasonable attorneys' fees to the prevailing party under the circumstances described in 34 Code of Federal Regulations, §300.517.

§89.1193. Special Education Mediation.

(a) In accordance with 34 Code of Federal Regulations (CFR), §300.506, the Texas Education Agency (TEA) has established a mediation process to provide parents and public education agencies with an opportunity to resolve disputes involving any matter arising under Part B of the Individuals with Disabilities Education Act (IDEA) or 34 CFR, §300.1 et seq. Mediation is available to resolve these disputes at any time.

(b) The mediation procedures must [~~shall~~] ensure that the process is:

(1) voluntary on the part of the parties;

(2) not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and

(3) conducted by a qualified and impartial mediator who is trained in effective mediation techniques and who is knowledgeable in laws and regulations relating to the provision of special education and related services.

(c) A request for mediation must be in writing and must be filed with the TEA by mail, hand-delivery, or facsimile. The TEA has developed a form that may be used by parties requesting mediation. The form is available on request from the TEA and is also available on the TEA website.

(d) The TEA will [~~shall~~] maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(e) An individual who serves as a mediator:

(1) must [~~may~~] not be an employee of the TEA or the public education agency that is involved in the education or care of the child who is the subject of the mediation process;

(2) must [~~shall~~] not have a personal or professional conflict of interest, including relationships or contracts with schools or parents outside of mediations assigned by the TEA; and

(3) is not an employee of the TEA solely because the individual is paid by the TEA to serve as a mediator.

(f) The TEA will select mediators on a random, rotational, or other impartial basis. If both parties join in requesting a specific mediator, the TEA will consider the request but reserves the right to make the final mediator selection based on availability, the need for equitable rotation, travel considerations, and other relevant mediation program considerations. The parties must advise the TEA of any preference they have in a mediator and must not contact a mediator to discuss the mediator's availability to conduct the mediation. The TEA will provide the parties with written notice of the specific mediator selected to conduct the mediation.

[~~(f) The parties by agreement may select a mediator from the list maintained by the TEA. If the parties do not select a mediator by agreement, a mediator will be selected on a random basis by the TEA.~~]

(g) If a mediator is also a hearing officer under §89.1170 of this title (relating to Impartial Hearing Officer), that individual may not serve as a mediator if he or she is the hearing officer in a pending due process hearing involving the same student who is the subject of the mediation process or was the hearing officer in a previous due process hearing involving the student who is the subject of the mediation process.

(h) The TEA will [~~shall~~] bear the cost of the mediation process.

(i) A mediation session must [~~shall~~] be scheduled in a timely manner and held in a location that is convenient to the parties.

(j) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that:

(1) states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) is signed by both the parent and a representative of the public education agency who has the authority to bind the public education agency.

(k) A written, signed mediation agreement under subsection (j) of this section is enforceable in any state or federal court of competent jurisdiction.

(l) Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings of any state or federal court.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605799
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL EQUIVALENCY PROGRAMS

19 TAC §§89.1403, 89.1409, 89.1417

The Texas Education Agency (TEA) proposes amendments to §§89.1403, 89.1409, and 89.1417, concerning the High School Equivalency Program (HSEP). The proposed amendments would modify rules for HSEPs to update references; simplify language for meeting required state assessment instruments for admission into the program; and amend conditions of program operation to reflect the change to multiple testing vendors, align with statute, and remove obsolete language.

The Texas Education Code (TEC), §29.087, authorizes the operation of HSEPs and outlines program requirements, including application to operate a program, and student eligibility. TEC, §29.087(n), authorizes the commissioner to adopt rules for the implementation and administration of HSEPs. The rules in 19 TAC Chapter 89, Subchapter DD, implement the provisions of the TEC, §29.087.

The proposed amendments would modify HSEP student eligibility language to update references to statute and a state agency name. The amendments would also update the language for state assessment requirements. Lastly, the amendments would make necessary changes to conditions of program operation to reflect the change to multiple high school equivalency test vendors, align with a statutory change from instructional days to minutes, and remove obsolete language.

Section 89.1403, Student Eligibility, would be updated to reference the applicable section of the Family Code rather than the Code of Criminal Procedure for court-ordered students. In addition, Texas Youth Commission would be updated to Texas Juvenile Justice Department.

The following changes would be made in §89.1409, Assessment. Subsection (a) would be amended to use the general term *state assessment instruments* rather than stating each required assessment for a particular school year or naming specific assessment instruments. Subsection (a)(3) would be deleted because it is redundant. Subsection (b) would be updated to reference the applicable section of the Family Code rather than the Code of Criminal Procedure for court-ordered students, and Texas Youth Commission would be updated to Texas Juvenile Justice Department. In subsection (c), vendor-specific language would be deleted since Texas now allows multiple testing vendors.

Section 89.1417, Conditions of Program Operation, would be amended in subsection (a) to delete the requirement that HSEPs submit an annual progress report to the TEA. The requirement was specific to a certain testing vendor and is no longer required since Texas now allows multiple testing vendors. Subsections (b), (c), and (e) are obsolete and would be deleted. Subsection (d), relettered as subsection (b), would be amended to align with House Bill 2610, 84th Texas Legislature, 2015, which changed instructional days to minutes.

The proposed amendments would eliminate a requirement that approved HSEPs submit an annual progress report to the TEA.

The proposed amendments would have no new locally maintained paperwork requirements.

FISCAL NOTE. Penny Schwinn, deputy commissioner for academics, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. There is no effect on local economy for the first five years that the proposed amendments are in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Dr. Schwinn has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to align the rules for HSEP with those for high school equivalency testing. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 25, 2016.

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code, §29.087, which authorizes the commissioner to allow schools to operate high school equivalency programs that meet certain conditions and parameters established by the statute and commissioner rule.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §29.087.

§89.1403. Student Eligibility.

A student is eligible to participate in a High School Equivalency Program if:

(1) the student has been ordered by a court under Texas Family Code, §65.103 [~~the Code of Criminal Procedure, Article 45.054~~], or by the Texas Juvenile Justice Department [~~Youth Commission~~] to:

(A) participate in a preparatory class for the high school equivalency examination; or

(B) take the high school equivalency examination administered under the Texas Education Code (TEC), §7.111; or

(2) the following conditions are satisfied:

(A) the student is at least 16 years of age at the beginning of the school year or semester;

(B) the student is at risk of dropping out of school, as defined by the TEC, §29.081;

(C) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation; and

(D) at least two school years have elapsed since the student first enrolled in Grade 9 and the student has accumulated less than one third of the credits required to graduate under the minimum graduation requirements of the district or school.

§89.1409. Assessment.

(a) A student entering a High School Equivalency Program (HSEP) must take:

(1) each state assessment instrument required for the student's applicable grade or cohort prior to entering the program; and[~~, the following assessments, as applicable:~~]

[~~(A) if the student first enters Grade 9 prior to the 2011-2012 school year, the student must take the Grade 9 Texas Assessment of Knowledge and Skills (TAKS) assessment in reading and mathematics; or~~]

[~~(B) if the student first enters Grade 9 during or after the 2011-2012 school year, the student must take the end-of-course (EOC) assessments for Algebra I and English I. Released Grade 9 TAKS assessments may be used until the applicable EOC has been released. The local school district shall be responsible for scoring the released assessment;~~]

(2) each state [~~TAKS or EOC~~] assessment instrument required for the student's applicable grade or cohort [~~to be administered~~] during the period in which the student is enrolled in the program.[~~; and~~]

[~~(3) the assessment instruments required by this subsection before taking the high school equivalency examination.~~]

(b) A student entering an HSEP by order of the court under Texas Family Code, §65.103 [~~pursuant to the Code of Criminal Proceedings, Article 45.054~~], or by order of the Texas Juvenile Justice Department [~~Youth Commission (TYC)~~], is exempt from the assessment requirements specified in subsection (a) of this section.

(c) The school district or open-enrollment charter school operating an approved HSEP must present to the [~~General Educational Development (GED) testing center, on a form provided by the~~] Texas Education Agency (TEA)[~~,~~] proof that a student has been administered the assessment instruments required by subsection (a) of this section. The TEA [~~GED testing centers~~] will not allow an HSEP student to take the high school equivalency examination without proof from the approved HSEP that the student has been administered the required assessment instruments. A student who is enrolled in an HSEP as described in this section and withdraws from the HSEP before taking the assessment instruments required by this subsection cannot take the high school equivalency examination [~~GED~~] until after the individual's 18th birthday.

(d) The school district or open-enrollment charter school operating an approved HSEP must inform each student who has completed the program of the time and place at which the student may take the high school equivalency examination as authorized by the TEC, §7.111. A student must be over 17 years of age or meet other requirements specified in the TEC, §7.111, to take the high school equivalency examination.

§89.1417. Conditions of Program Operation.

(a) A school district or open-enrollment charter school operating a High School Equivalency Program (HSEP) must comply with all assurances in the program application. [~~Approved HSEPs will be required to submit annually one progress report as instructed by the General Educational Development Testing Service (GEDTS) to the Texas Education Agency.~~] Approved HSEPs will be required to submit data as stated in the assurances section of the program application.

[~~(b) A school district or open-enrollment charter school authorized by the commissioner of education on or before August 31, 2003, to operate a program in accordance with this subchapter may continue to operate that program in accordance with this section.~~]

[~~(c) Enrollment in an HSEP may not exceed by more than 5% the total number of students enrolled in a similar program operated by the school district or charter school during the 2000-2001 school year.~~]

(b) [~~(d)~~] A student enrolled in an HSEP must be offered at a minimum 420 minutes of instruction per [~~a seven-hour~~] school day and 75,600 [~~a 180-day~~] instructional minutes per [~~year~~] calendar year.

[~~(e) Beginning with the 2003-2004 school year, a student may be enrolled in an HSEP that was authorized by the commissioner on or before August 31, 2003; however, the student cannot take any portion~~

~~of the GED test after September 1, 2003, without meeting the assessment requirements specified in §89.1409 of this title (relating to Assessment).]~~

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605795
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS
DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1010

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §100.1010 is not included in the print version of the Texas Register. The figure is available in the on-line version of the November 25, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §100.1010, concerning open-enrollment charter schools. The proposed amendment would adopt in rule the *2016 Charter School Performance Framework Manual* established under Texas Education Code (TEC), §12.1181.

The TEC, §12.1181, requires the commissioner to develop and adopt rules for performance frameworks that establish standards by which to measure the performance of open-enrollment charter schools. The frameworks are used to annually evaluate each open-enrollment charter school. However, the performance of a school on a performance framework may not be considered for purposes of renewal of a charter under TEC, §12.1141(d), or revocation of a charter under TEC, §12.115(c).

In accordance with statute, the TEA developed the Charter School Performance Framework (CSPF) Manual. The manual includes measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under 19 TAC §97.1001, Accountability Rating System. The commissioner exercised rulemaking authority to adopt 19 TAC §100.1010 effective September 18, 2014.

The performance frameworks evolve from year to year, so the criteria and standards for measuring open-enrollment charter schools in the most current year differ to some degree over those applied in the prior year. The intention is to update 19 TAC §100.1010 annually to refer to the most recently published CSPF Manual.

The proposed amendment would adopt in rule the *2016 Charter School Performance Framework Manual,* which would be used to assign performance levels on the 2016 CSPF report.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Crabill has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be informing the public of specific criteria used to measure the performance of open-enrollment charter schools in the CSPF report. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 25, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code, §12.1181, which requires the commissioner to develop and by rule adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §12.1181.

§100.1010. Performance Frameworks.

(a) The performance of an open-enrollment charter school will be measured annually against a set of criteria set forth in the Charter School Performance Framework (CSPF) Manual established under Texas Education Code, §12.1181. The CSPF Manual will include measures for charters registered under the standard system and measures for charters registered under the alternative education accountability system as adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) The assignment of performance levels for open-enrollment charter schools on the 2016 CSPF report is based on specific criteria, which are described in the *2016 Charter School Performance Framework Manual* provided in this subsection.
Figure: 19 TAC §100.1010(b)

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605798
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §100.1033

The Texas Education Agency proposes an amendment to §100.1033, concerning open-enrollment charter schools. The proposed amendment would modify the section to comply with statutory provisions implemented as a result of House Bill 1842, 84th Texas Legislature, 2015, and to more closely match other existing statutory provisions, including the reauthorization of the No Child Left Behind Act as the Every Student Succeeds Act (ESSA).

Section 100.1033 was established to allow for changes to a charter holder's contract, including the growth or expansion of an existing charter school. The section was last amended effective September 18, 2014, to make changes to the charter amendment process and the types of amendments available.

The proposed amendment to 19 TAC §100.1033 would provide clarity and align the section with provisions in the Texas Education Code as well as ESSA. The changes would provide clarity around the consideration of three distinct categories of charter school expansions and their corresponding criteria: regular expansions, expedited expansions, and high-quality campus designations.

The proposed amendment would have no new procedural or reporting implications. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. A.J. Crabill, deputy commissioner for governance, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Mr. Crabill has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be ensuring that rules governing open-enrollment charter schools are aligned with current law. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 25, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §12.101(b-4), as amended by House Bill 1842, 84th Texas Legislature, 2015, which provides autonomy for a charter holder to establish an expedited campus if the charter school meets the criteria outlined in the statute and the commissioner of education does not determine the charter school does not satisfy the requirements; and TEC, §12.114, which provides for the growth or revision of a charter through the amendment process and stipulates that a revision or amendment to the charter school contract may only be made with the approval of the commissioner of education not later than 60 days following the request.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §12.101(b-4) and §12.114.

§100.1033. Charter Amendment.

(a) Amendments in writing. Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by the commissioner of education in writing.

(b) Types of amendments. An amendment includes any change to the terms of an open-enrollment charter, including the following: maximum enrollment, grade levels, [~~maximum enrollment,~~] geographic boundaries, approved campus(es), approved sites, relocation of campus, charter holder name, charter school (district) name, charter campus name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. [~~For purposes of this section, educational program means the educational philosophy or mission of the school or curriculum models or whole-school designs that are inconsistent with those specified in the school's charter.~~] An amendment must be approved by the commissioner under this subsection. Expanding prior to receiving the commissioner's approval will have financial consequences as outlined in §100.1041(d)(1) of this title (relating to State Funding).

(1) Charter amendment request. Prior to implementation, the charter holder shall file a request, in the form prescribed, with the Texas Education Agency (TEA) division responsible for charter schools. [~~a request, clearly labeled "charter amendment request."~~] As applicable, the request shall set forth the text and page references, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. The request must be [~~made in or~~] attached to a written resolution adopted by the governing body of the charter holder and signed by a majority of the members indicating approval of the requested amendment.

(2) Timeline. All charter amendment requests, with the exception of [except for] expansion amendments, may be filed with the commissioner at any time.

(3) Relevant information considered. As directed by the commissioner, a charter holder requesting a substantive amendment shall submit current information required by the prescribed [current] amendment form, as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder, including its student and other performance; compliance, staff, financial, and organizational data; and other information.

(4) Best interest of students. The commissioner may approve an amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny an amendment.

(5) Conditional approval. The commissioner may grant the amendment without condition, or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school. An amendment receiving conditional approval shall not be effective until a written resolution accepting all conditions and/or requirements, adopted by the governing body of the charter holder and signed by the members voting in favor, is filed with the TEA division responsible for charter schools.

(6) Relocation amendment. An amendment to relocate an existing campus or site with the same administration and staff while still serving the same students and grade levels is not an expansion amendment subject to paragraphs (9)(A) and (10)(D) of this subsection. An amendment to relocate solely permits a charter holder [an existing campus] to relocate an existing campus or site to an alternate address while serving the same students and grade levels without a significant disruption to the delivery of the educational services. The alternate address in the relocation request shall not be in excess of 25 miles from the existing campus address.

(7) Ineligibility. The commissioner will not consider any amendment that is submitted by a charter holder that has been notified by the commissioner of the intent to revoke or nonrenew the charter [under Texas Education Code (TEC), §12.115(c)]. Nothing in this subsection limits the commissioner's authority to accept the surrender of a charter.

(8) Amendment determination. The commissioner's decision on an amendment request shall be final and may not be appealed. The same amendment request may not be submitted prior to the first anniversary of the original submitted amendment.

(9) Expansion amendment standards. An expansion amendment is an amendment that permits a charter school to increase its maximum allowable enrollment, extend the grade levels it serves, [add a campus, add a site,] change its geographic boundaries, or add a campus or site [increase its maximum allowable enrollment].

(A) In addition to the requirements of this subsection, the commissioner may approve an expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has a [as its most recent] rating of "academically acceptable" [or higher,] as defined by §100.1001(26) of this title (relating to Definitions) as its most recent rating[,] and is operated by a charter holder that operates multiple [other] charter campuses and all of that charter holder's most recent campus ratings are "academically acceptable" [or higher,] as defined by §100.1001(26) of this title[, under the relevant accountability manual];

(ii) the amendment request under paragraph (1) of this subsection is received no earlier than the first day of February[, or after the submission to the TEA of the annual financial report for the immediately preceding fiscal year,] and no later than the first day of April preceding the school year in which the expansion will be effective;

(iii) the most recent district rating for the charter school is [90% of the campuses operated under the charter are] "academically acceptable" and the most recent campus rating for at least 90% of the campuses operated under the charter school is "academically acceptable" [or higher,] as defined by §100.1001(26) of this title[, under the relevant accountability manual];

(iv) the most recent district financial accountability rating for the charter school in the Financial Integrity Rating System of Texas (FIRST) for Charter Schools is "satisfactory" as defined by §100.1001(27) of this title;

(v) the charter school has an accreditation status of Accredited;

(vi) [(iv)] the charter holder has provided evidence of the notification of the expansion amendment request, via certified mail, as documented by a return receipt to the board of trustees and superintendent of each school district affected by the expansion as described in the amendment request form, noting that each entity [that each school district affected by the expansion was sent a notice of the expansion amendment and] was given an opportunity to submit a statement regarding the impact of the amendment on the district;

[(v) the commissioner determines that the amendment is in the best interest of the students of Texas;]

(vii) [(vi)] before voting to request an expansion amendment [the enrollment increase], the charter holder governing board [body] has considered a business plan, has determined by majority vote of the board that the growth proposed is prudent, and includes such a statement in the board resolution. Upon [which upon] request by the TEA, the business plan must be filed within ten business days. The business plan must be comprised of the following components:

(I) a statement discussing the need for the expansion [an increase in the maximum enrollment];

(II) a statement discussing the current and projected financial condition of the charter holder and charter school;

(III) an unaudited statement of financial position for the current fiscal year;

(IV) an unaudited statement of financial activities for the current fiscal year;

(V) an unaudited statement of cash flows for the current fiscal year;

(VI) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(VII) a statement or schedule that identifies the assumptions used to calculate the charter school's estimated Foundation School Program revenues;

(VIII) a statement discussing the use of debt instruments to finance part or all of the charter school's incremental costs;

(IX) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment; [~~and~~]

(X) a statement discussing the incremental cost of additional on-site personnel and identifying the additional number of full-time equivalents that will be employed; and

(XI) a statement that the growth proposed is prudent;

(viii) [~~(vii)~~] the charter holder submits, for the most recent year [~~three years~~] of operation, copies of the compliance information relating to [~~on file as required in~~] §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving) to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees; [~~and~~]

(ix) the commissioner determines that the amendment is in the best interest of the students of Texas; and

(x) [~~(viii)~~] the charter holder meets all other requirements applicable to expansion amendment requests and other amendments.

(B) Notice of the approval or disapproval of expansion amendments will be made by the commissioner within 60 days of the date the charter holder submits a completed expansion amendment request. The commissioner may provide notice electronically. The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements that [~~as~~] may be in the best interest of the students of Texas.

(10) Expansion amendments.

(A) Maximum enrollment. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment only if[~~:~~]

[~~(i)~~] within the calendar year preceding the request, the charter holder has not requested another expansion amendment seeking to increase maximum allowable enrollment. [~~; and~~]

[~~(ii)~~ ~~the board resolution required by paragraph (1) of this subsection includes a statement that the charter holder board has considered the business plan required by paragraph (9)(A)(vi) of this subsection and has determined by majority vote of the board that the enrollment growth proposed in the business plan is prudent.~~]

(B) Grade span. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels in accordance with Chapter 74, Subchapter A of this title (relating to Required Curriculum), and such plan has been reviewed and approved by the charter governing board.

(C) Geographic boundary. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to expand the geographic boundaries of the charter school only if it is accompanied by the relevant letters of notification of impact of the surrounding districts and evidence of mailing, and such requests are in relation to any current or newly proposed facility location.

(D) Additional campus. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new campus[~~, within 60 days of the date the charter holder submits a completed request,~~] only if it meets the following criteria:

(i) the charter holder has operated at least one charter school campus in Texas for a minimum of three consecutive years; and

(ii) the charter school has at least 50% of the student population in tested grades.

[~~(ii)~~ ~~the charter has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) and meets the following:~~]

[~~(I)~~ ~~has at least 50% of the student population in tested grades, unless waived by the commissioner;~~]

[~~(II)~~ ~~has an accreditation status of Accredited; and~~]

[~~(III)~~ ~~is currently evaluated under the standard accountability procedures and received a district rating of highest or second highest rating for three of the last five years with at least 75% of the campuses rated under the charter also having the highest or second highest rating and no campus with the lowest performance rating in the most recent state accountability ratings.~~]

(E) Additional site. In addition to the requirements of paragraph (9)(A) of this subsection, the commissioner may approve an expansion amendment request seeking to add a new site only if it meets the following criteria:

(i) the charter school campus under which the proposed new site will be assigned currently has at least 50% of the student population in tested grades; and

(ii) the site will be located within 25 miles of the campus with which it is associated.

(11) Expedited [~~Quality~~] expansion. An expedited [~~A quality~~] expansion amendment allows for the establishment of a new charter campus under TEC, §12.101(b-4). [~~The commissioner may approve a quality expansion for a charter only if:~~]

(A) In order to submit an expedited expansion amendment, the charter school must meet the following requirements.

[~~(A)~~] [~~the commissioner does not disapprove in writing within 60 days after receipt of a completed application; and~~]

(i) [~~(B)~~] The [~~the~~] charter school must have [~~holder has~~] an accreditation status of Accredited and meet [~~meets~~] the following criteria:

(I) [~~(i)~~] currently has at least 50% of its student population in grades assessed under TEC, Chapter 39, Subchapter B, or has had at least 50% of the students in the grades assessed enrolled in the school for at least three years; and

(II) [~~(ii)~~] is currently evaluated under the standard accountability procedures for evaluation under TEC, Chapter 39, and received a district rating in the highest or second highest performance rating category under TEC, Chapter 39, Subchapter C, for three of the last five years with:

(-a-) [~~(I)~~] at least 75% of the campuses rated under the charter school also receiving a rating in the highest or second highest performance rating category in the most recent ratings; and

(-b-) [~~(II)~~] [~~with~~] no campus receiving [~~with~~] a rating in the lowest performance rating category in the most recent ratings.

(ii) The charter holder must submit an expedited expansion amendment request in the time, manner, and form prescribed to the TEA division responsible for charter schools. The expansion amendment request will be:

(I) effective no earlier than the start of the fourth full school year at the affected charter school;

(II) received no earlier than the first day of February and no later than the first day of April preceding the school year in which the expansion will be effective;

(III) communicated via certified mail with a return receipt to the following entities:

(-a-) the board of trustees and superintendent of each school district affected by the expedited expansion as described in the amendment request form; and

(-b-) the members of the legislature who represent the geographic area affected by the expedited expansion as described in the amendment request form, noting that each entity has an opportunity to submit a statement regarding the impact of the amendment to the TEA division responsible for charter schools;

(IV) voted on by the charter holder governing body after consideration of a business plan determined by majority vote of the board affirming the growth proposed in the business plan is prudent. Such a statement must be included in the board resolution. Upon request by the TEA, the business plan must be filed within ten business days; and

(V) submitted with copies of the most recent compliance information relating to §100.1035 of this title to include documents such as affidavits identifying a board member's substantial interest in a business entity or in real property, documentation of a board member's abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees.

(B) Notice of eligibility to establish an expedited campus under this section will be made by the commissioner within 60 days of the date the charter holder submits a completed expedited expansion amendment.

(12) High-Quality Campus Designation [~~New school designation~~]. A High-Quality Campus Designation is a separate designation and must be paired with [~~new school designation is~~] an expansion amendment. If approved by the commissioner, this designation [~~that~~] permits a charter holder to establish an additional charter school campus under an existing open-enrollment charter school pursuant to federal non-regulatory guidance [~~in the Elementary and Secondary Education Act (ESEA), Section 5202(d)(1), as amended~~]. Charter holders of charter schools that receive High-Quality Campus Designation [~~new school designations~~] from the commissioner will be eligible to participate in the charter school program competitive grant process when federal funding for the Texas charter school program is available.

(A) The commissioner may approve a High-Quality Campus Designation [~~new school designation~~] for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment set forth in this section and has operated at least one charter school campus in Texas for a minimum of five consecutive years;

(ii) the charter school has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) currently with at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, and [~~meets the following:~~]

~~*[(I)]*~~ is currently evaluated under the standard accountability procedures and received the highest or second highest district rating for three of the last five years with all [~~at least 75%~~] of the campuses operated [~~rated~~] under the charter also receiving the highest or second highest rating [~~and no campus with an "academically unacceptable" rating,~~] as defined by §100.1001(26) of this title[~~;~~] in the most recent state accountability ratings. [~~A rating that does not meet the criteria for "academically acceptable" as defined in §100.1001(26) of this title shall not be considered the highest or second highest academic performance rating for purposes of this section; or~~]

~~*[(II)*~~ ~~is currently evaluated under the alternative education accountability (AEA) procedures and received the highest or second highest AEA district rating for five of the last five years with:~~]

~~[(-a-) in the most recent applicable state accountability ratings, all rated campuses under the charter receiving an "academically acceptable" or higher rating, as defined by §100.1001(26) of this title; and~~]

~~[(-b-) if evaluated using AEA procedures, the district-level assessment data corresponding to the most recent accountability ratings demonstrate that at least 30% of the students in each of the following student groups (if evaluated) met the standard as reported by the sum of all grades tested on the standard accountability indicator in each subject area assessed: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient, and at risk;~~]

(iii) no charter campus has been identified for federal interventions in the most current report;

(iv) the charter school is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) the charter holder completes an application approved by the commissioner;

(vi) the new charter school campus will serve at least 100 students in its first year of operation;

(vii) the amendment complies with all requirements of this paragraph; and

(viii) the commissioner determines that the designation is in the best interest of the students of Texas.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a High-Quality Campus Designation [~~new school designation~~] only on making the following written findings:

(i) the proposed school satisfies each element of the definition of a public charter school as set forth in federal law [~~the ESEA, Section 5210(1)~~];

~~*[(ii)*~~ ~~the proposed school is not merely an extension of an existing charter school;~~]

(ii) [~~(iii)~~] the proposed school campus is separate and distinct from the existing charter school campus(es) [~~school(s)~~] established under the open-enrollment charter school with a new facility and county-district-campus number; and

(iii) [~~(iv)~~] the open-enrollment charter school, as amended, includes a separate written performance agreement for the proposed school campus that meets the requirements of federal law [~~the ESEA, Section 5210(1)(L),~~] and TEC, §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter school as a whole, as modified by the High-Quality Campus Designation [~~new school designation~~]; and

(ii) whether the proposed school campus shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) [~~and (iii)~~] of this paragraph, the commissioner shall consider whether the proposed school campus and the existing charter school campus(es) [~~school(s)~~] have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the proposed school campus will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iii) [~~(B)(iv)~~] of this paragraph, the commissioner shall consider:

(i) whether the proposed school campus and the existing charter school campus(es) [~~school(s)~~] have distinctly different requirements in their respective written performance agreements; [~~and~~]

(ii) whether an annual independent financial audit of the proposed school campus is to be conducted. The high-quality campus must have a plan for a separate audit schedule apart from the open-enrollment charter school audit; and

(iii) [~~(ii)~~] the extent to which the performance agreement for the proposed school campus imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

(F) Failure to meet any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iii) [~~(B)(iv)~~] of this paragraph shall mean the immediate termination of any federal charter school program grant and/or any waiver exempting a charter from some of the expansion amendment requirements that may have been granted to a charter holder as a result of the High-Quality Campus Designation [~~new school designation~~].

(13) Delegation amendment. A delegation amendment is an amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.

(A) The commissioner may approve a delegation amendment only if:

(i) the charter holder meets all requirements applicable to delegation amendments and amendments generally;

(ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5, of this title (relating to Charter School Governance); and

(iii) the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school.

(B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school.

(C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;

(iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body's superior right of immediate access to, control over, and possession of such records;

(iv) final authority to adopt policies governing charter school operations;

(v) final authority to approve audit reports under TEC, §44.008(d); or

(vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for the superintendent or, as applicable, the administrator serving as the educational leader and [~~a~~] chief executive officer.

(D) The following powers and duties must be exercised by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school [~~holder~~]. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i)-(iii) of this subparagraph cannot reasonably be carried out by the superintendent or, as applicable, the administrator serving as the educational leader and chief executive officer of the charter school [~~holder~~], the commissioner may not grant an amendment permitting the superintendent/chief [~~chief~~] executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the superintendent/chief [~~chief~~] executive officer of the charter school [~~holder~~] shall not delegate final authority:

(i) to organize the charter school's central administration;

(ii) to approve reports or data submissions required by law; or

(iii) to select and terminate charter school employees or officers.

(c) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605794
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

CHAPTER 103. HEALTH AND SAFETY
SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING VIDEO SURVEILLANCE OF CERTAIN SPECIAL EDUCATION SETTINGS

19 TAC §103.1301

The Texas Education Agency (TEA) proposes an amendment to §103.1301, concerning video surveillance of certain special education settings. The proposed amendment would update the rule to be consistent with the plain language in the authorizing statute.

In order to promote the safety of students receiving special education and related services in certain self-contained classrooms and other special education settings, Texas Education Code (TEC), §29.022, requires video surveillance on request by a parent, trustee, or staff member. Beginning with the 2016-2017 school year, a school district or open-enrollment charter school must provide video equipment, including video cameras with audio recording capabilities, to campuses on request by a parent, trustee, or staff member. Campuses that receive such equipment must place, operate, and maintain video cameras in certain self-contained classrooms or other special education settings. Video recordings are confidential under the section and may only be released for viewing to certain individuals.

In March 2016, the TEA sought guidance from the Texas Attorney General regarding the proper construction of certain provisions in TEC, §29.022. While the opinion request was pending, TEA adopted new 19 TAC §103.1301 effective August 15, 2016, and advised the public that it would modify the rule, as necessary, upon receipt of the Texas Attorney General's opinion. On September 13, 2016, the Texas Attorney General issued his opinion, which advised TEA that the definition of *staff member* in 19 TAC §103.1301 is more restrictive than the plain language in TEC, §29.022. The opinion also advised that the plain language of the statute requires a school district or open-enrollment charter school to provide, upon request, video equipment to *each* self-contained classroom or other special education setting.

The proposed amendment would update the rule to be consistent with the plain language in statute by clarifying the definition of *staff member.* A conforming edit would be made to language relating to who may view a video recording made under TEC, §29.022. In addition, to align with statute, technical changes would be made to change the article *the* to *a* when referring to self-contained classrooms or other special education settings.

The proposed amendment would have no new procedural or reporting implications. The proposed amendment would have no new locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and support services, has determined that for the first five-year period the amendment is in effect, enforcing or administering the amendment will have no foreseeable economic implications. However, the authorizing statute, TEC, §29.022, has fiscal implications for school districts and open-enrollment charter schools. The agency is not able to report the total number of self-contained classrooms or other special education settings that may be subject to the requirements in TEC, §29.022. Whether a classroom or setting is subject to the statute is dependent upon whether a majority of the students in regular attendance receive special education services in the classroom or setting for a majority of the instructional day. According to school district representatives, the costs associated with implementing TEC, §29.022, will vary widely from district to district based on the number of self-contained classrooms and other special education settings in the district, the number of cameras needed to cover each classroom or setting, the district's existing technological infrastructure, the economies of scale (i.e., smaller districts will purchase fewer video cameras at a higher price while larger ones will purchase more cameras at a lower price), and other factors. On a per classroom basis, school districts have estimated costs ranging between $3,500 and $5,500. School districts have estimated that conducting video surveillance districtwide could cost anywhere from $350,000 to $6.8 million.

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

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be providing needed clarification of certain requirements in TEC, §29.022. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins November 25, 2016, and ends December 27, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to *rules@tea.texas.gov.* A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on November 25, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §29.022, which requires video surveillance in certain special education settings in order to promote student safety. TEC, §29.022(k), authorizes the commissioner to adopt rules to implement and administer TEC, §29.022,

including rules regarding the special education settings to which the section applies.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §29.022.

§103.1301. Video Surveillance of Certain Special Education Settings.

(a) Requirement to implement. Beginning with the 2016-2017 school year, in order to promote student safety, on request by a parent, trustee, or staff member, a school district or open-enrollment charter school must provide video equipment to campuses in accordance with Texas Education Code (TEC), §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.

(b) Definitions. For purposes of TEC, §29.022, and this section, the following terms have the following meanings.

(1) Parent means a person described in TEC, §26.002, whose child receives special education and related services for at least 50 percent of the instructional day in a [~~the~~] self-contained classroom or other special education setting. Parent also means a student who receives special education and related services for at least 50 percent of the instructional day in a [~~the~~] self-contained classroom or other special education setting and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

(2) Staff member means an employee of the school district or open-enrollment charter school [~~a teacher, related service provider, paraprofessional, or educational aide assigned to work in the self-contained classroom or other special education setting. Staff member also includes the principal or an assistant principal of the campus at which the self-contained classroom or other special education setting is located~~].

(3) Trustee means a member of a school district's board of trustees or a member of an open-enrollment charter school's governing body.

(4) Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.

(5) Self-contained classroom means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district or an open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):

(A) self-contained (mild/moderate/severe) regular campus;

(B) full-time early childhood (preschool program for children with disabilities) special education setting;

(C) residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;

(D) residential care and treatment facility--full-time early childhood special education setting;

(E) off home campus--self-contained (mild/moderate/severe) regular campus; or

(F) off home campus--full-time early childhood special education setting.

(6) Other special education setting means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district or open-enrollment charter school in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

(A) residential care and treatment facility--separate campus; or

(B) off home campus--separate campus.

(7) Video camera means a video surveillance camera with audio recording capabilities.

(8) Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(9) Incident means an event or circumstance that:

(A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; and

(B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, the Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in TEC, §29.022, and this section.

(d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.

(e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.

(f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year and during extended school year services.

(g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to video surveillance under TEC, §29.022, and this section. At a minimum, the policies must include:

(1) a statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;

(2) the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;

(3) the procedures for providing advanced written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;

(4) a requirement that video cameras be operated at all times during the instructional day when students are in a [~~the~~] self-contained classroom or other special education setting;

(5) a statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

(6) a requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in TEC, §29.022(a);

(7) a requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance may be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student's clothes;

(8) a statement that video recordings must be retained for at least six months after the date the video was recorded;

(9) a statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;

(10) at the school district's or open-enrollment charter school's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;

(11) the procedures for reporting a complaint alleging that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(12) the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(13) a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be viewed by the following individuals, to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

(1) a staff member [~~or other school district or charter school employee~~] or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by a video recording for which a complaint has been reported to the district or charter school;

(2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;

(3) a peace officer, school nurse, administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a complaint or an investigation of an incident described in subsection (b)(9) of this section; or

(4) appropriate Texas Education Agency or State Board for Educator Certification personnel or agents as part of an investigation.

(i) Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under §61.1051 of this title (relating to Reporting Child Abuse and Neglect) and Texas Family Code, Chapter 261.

(j) Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy must be released for viewing by the district or charter school employee who is the subject of the disciplinary action at the request of the employee.

(k) Access rights. Subsections (i) and (j) of this section do not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605796
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.350

The Comptroller of Public Accounts proposes new §3.350, concerning master recordings and broadcasts. This section is being proposed to implement Tax Code, §151.3185 (Property Used in the Production of Motion Pictures or Video or Audio Recordings and Broadcasts), as amended by House Bill 2507, 84th Legislature, 2015 (effective September 1, 2015), which provides an exemption from sales and use tax for certain taxable items used in the production of motion pictures, video and audio recordings, and broadcasts, including certain equipment used for digital television and digital audio broadcasting. In addition, §3.350 is being proposed to implement Tax Code, §151.3415 (Items Sold to or Used to Construct, Maintain, Expand, Improve, Equip, or Renovate Media Production Facilities at Media Production Locations; Report), which provides an exemption from sales and use tax for certain taxable items purchased by a qualified person for use in a qualified media production location.

The new section replaces repealed §3.309 of this title (relating to Electrical Transcriptions, Recording Studios, Producers) and repealed §3.350 of this title (relating to Motion Pictures). The comptroller repealed both of these sections in order to simplify the consolidation of related sections into a single section. See (27 TexReg 9386).

Subsection (a) provides definitions of words and phrases used in the new section. Paragraph (1) defines the term "audio recording." This definition is derived from the definition of "sound recording" in the United States Copyright Act, 17 U.S.C. §101.

Paragraph (2) defines the term "broadcast" in accordance with its ordinary meaning and expands the definition to include cable television. In other contexts, the term "broadcasting" may be limited to transmissions over frequencies that are available to the general public. But the legislature has clarified that for purposes of Tax Code, §151.3185, the term "broadcasting" also includes the "production of a broadcast by or for a cable program producer." The term "cable program producer" has more than one reasonable interpretation. The comptroller believes that the use of the term "cable television" in this section should be consistent with the definition of "cable television service" in Tax Code, §151.0033 ("Cable Television Service"), which covers the "distribution of video programming with or without the use of wires to subscribing or paying customers." As with the definition of "cable television service" in Tax Code, §151.0033, this definition includes the transmission of programming by means of subscription television services delivered via satellite.

Paragraph (3) provides that "C.F.R." stands for the Code of Federal Regulations.

Paragraph (4) defines the term "C.F.R.-compliant digital audio broadcast equipment" by reference to digital audio broadcast stations which provide broadcast services described by 47 C.F.R. §73.403 (Digital Audio Broadcasting Service Requirements) and §73.404 (Interim Hybrid IBOC DAB Operation).

Paragraph (5) defines the term "C.F.R.-compliant digital television transmission equipment" by reference to those stations required to comply with the television transmission standards in 47 C.F. R. §73.682(d) (Digital Broadcast Television Transmission Standard).

Paragraph (6) defines the term "distribute." This definition is derived from the corresponding dictionary definition in the American Heritage College Dictionary, Fourth Edition.

Paragraph (7) defines the term "exhibit." This definition is based on the use of the term "exhibition" in the United States Copyright Act, 17 U.S.C. §101, which refers to the public performance of a copyrighted work.

Paragraph (8) defines the term "license." This definition is derived from the corresponding dictionary definition in the American Heritage College Dictionary, Fourth Edition.

Paragraph (9) defines the term "live program" to identify the productions covered by Tax Code, §151.3185(a)(1)(B) and (a)(2)(B) that are not covered by Tax Code, §151.3185(a)(1)(A) and (a)(2)(A). Because Tax Code, §151.3185(a)(1)(A) and (a)(2)(A) cover pre-recorded programs, the only additional type of program covered by Tax Code, §151.3185(a)(1)(B) and (a)(2)(B) is a "live" program.

Paragraph (10) defines the term "master recording." This term is intended to encompass the statutory concept of "a motion picture or video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise exhibited." See Tax Code, §151.3185(a)(1)(A), (2)(A). The definition also incorporates portions of the definition of the term "broadcasting" provided in 47 U.S.C. §153(7) (Definitions). In addition, the definition includes the guidance provided in STAR Accession No. 200307027L (July 23, 2003).

Paragraph (11) defines the term "media production facility" and is assigned the same meaning as in Government Code, §485A.002(1) (Definitions).

Paragraph (12) defines the term "motion picture recording." This definition is derived from the definition of "motion picture" in the United States Copyright Act, 17 U.S.C. §101.

Paragraph (13) defines the term "moving image project" and is assigned the same meaning as in Government Code, §485A.002(3).

Paragraph (14) defines the term "producer," which is used only once in Tax Code, §151.3185(e) to identify the person eligible to claim an exemption on the sale of a motion picture, video, or audio master. Logically, the "producer" must be the original owner of the rights that can be sold.

Paragraph (15) defines the term "qualified media production location" and has the same meaning as in Government Code, §485A.002(6). Because the Office of the Governor does not currently have a Music, Film, Television, and Multimedia Office, a reference to the Texas Film Commission is used in place of that office.

Paragraph (16) defines the term "qualified person" and has the same meaning as in Government Code, §485A.002(7).

Paragraph (17) defines the term "Texas Film Commission" and is provided to reference the division of the Office of the Governor of Texas that is assigned to administer and monitor the implementation of Government Code, Chapter 485A (Media Production Development Zones).

Paragraph (18) defines the term "video game." This definition is derived from guidance provided in STAR Accession No. 201405957L (May 28, 2014).

Paragraph (19) defines the term "video recording." This definition is derived from the definition of "audiovisual works" in the United States Copyright Act, 17 U.S.C. §101.

Subsection (b) addresses the sale and license of master recordings. Paragraph (1) implements Tax Code, §151.3185(e), which exempts the sale of a master recording by its producer. Paragraph (2) addresses sales of copies of a master recording. Paragraph (3) explains that sales and use tax is not due on the sale of a license to broadcast, distribute, or exhibit a master recording.

Subsection (c) lists the exemptions from Texas sales and use tax on the purchase or use of taxable items used in the production of master recordings and live programs, which are listed in Tax Code, §151.3185(a) and (b).

Subsection (d) identifies certain items of tangible personal property and certain taxable services that do not qualify for exemption under Tax Code, §151.3185. Paragraph (1) implements Tax Code, §151.3185(c). This paragraph lists taxable items that are subject to sales and use tax even when used in the production of master recordings or live programs. Paragraph (2) provides additional examples. Paragraph (3) implements Tax Code, §151.3185(d).

Subsection (e) explains that motor vehicle and trailers are exempt from sales and use tax under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) because they are subject to motor vehicle tax. See Tax Code, §151.308 (Items Taxed by Other Law). Although transportation equipment is excluded from the exemption in this section, purchases and rentals of motor vehicles are not subject to the sales and use tax.

Subsection (f) establishes exemptions available for the purchase of C.F.R.-compliant digital television transmission equipment pursuant to Tax Code, §151.3185(f). The Tax Code refers to entities "to which 47 C.F.R. Section 73.624(b) applies." Because 47 C.F.R. §73.624(b) applies to digital television broadcast station licensees and permittees, that is the terminology used in subsection (f). This subsection memorializes guidance previously provided in STAR Accession No. 200212663L (December 30, 2002) (partially superseded on other grounds). Paragraph (1) specifies when C.F.R.-compliant digital television transmission equipment is exempt. Paragraph (2) explains that qualifying equipment may be used for both analog and digital television transmission. Paragraph (3) memorializes prior comptroller guidance providing that an Advanced Television Systems Committee (ATSC) encoder is exempt. Paragraph (4) explains why equipment purchased by a cable or satellite company is not exempt.

Subsection (g) establishes exemptions available to In-band On-Channel (IBOC) digital audio broadcast stations that provide broadcast services described in 47 C.F.R. §73.403 or §73.404. This subsection implements House Bill 2507, which added subsection (g) to Tax Code, §151.3185. Paragraph (1) specifies when C.F.R.-compliant digital audio broadcast equipment is exempt. Paragraph (2) specifies that equipment used to transmit both over-the-air digital audio programming at no direct charge to listeners and over-the-air digital audio programming for a fee to listeners is exempt. Broadcast stations using IBOC are required by 47 C.F.R. §73.403 to transmit at least one over-the-air digital audio programing stream at no direct charge to listeners. Paragraph (3) specifies when equipment does not qualify for the exemption.

Subsection (h) describes the exemptions available for the repair and maintenance of items purchased tax-free pursuant to the exemptions in subsections (c), (f), and (g). This subsection implements Tax Code, §151.3111 (Services on Certain Exempted Personal Property). The exemption in this section extends to the repair and maintenance of tangible personal property. Since the statute does not provide an exemption for real property, the repair and maintenance of tangible personal property incorporated into real property that has become real property is subject to sales and use tax pursuant to Tax Code, §151.0101(a)(13).

Subsection (i) addresses exemptions available for natural gas and electricity used in the production of a master recording. Paragraph (1) implements Tax Code, §151.317(a)(2). The statutory language limits the exemption to use of gas and electricity by a person processing tangible personal property for sale as tangible personal property. Consequently, it does not cover the production of live programs. Paragraph (2) addresses the use of natural gas and electricity for a purpose that is not exempt. Examples of non-exempt use are provided. Paragraph (3) explains the requirement for a predominant use study to establish eligibility for the exemption when natural gas and electricity is used in exempt and non-exempt ways and measured by a single meter.

Subsection (j) establishes exemptions available for qualified media production locations pursuant to Tax Code, §151.3415. Paragraph (1) identifies persons eligible for the exemption.

Paragraph (2) provides that a taxable item is exempt based on its purpose and use. Subparagraphs (A), (B), and (C) explain how the equipment must be used for the exemption to apply. This paragraph implements Tax Code, §151.3415(b).

Paragraph (3) addresses the taxability of repair and maintenance services performed at a media production facility located in a qualified media production location.

Paragraph (4) explains that the exemption is temporary. This paragraph implements the statement in Tax Code, §151.3415(b) that the exemption "is for a maximum of two years." As explained in subparagraph (A), the exemption begins on the date that both the qualified person and qualified media production location are certified by the Texas Film Commission, pursuant to Government Code, §485A.201. Subparagraph (B) explains that the exemption ends on the earlier of the date on which the qualified person's certification expires pursuant to Government Code, §485A.203; the qualified media production location's certification expires pursuant to Government Code, §485A.111; the qualified person's certification is revoked pursuant to Government Code, §485A.204; or the qualified media production location's certification is revoked pursuant to Government Code, §485A.112. Subparagraph (C) provides that the exemption is available for a maximum of two years from the date of certification of the qualified person or the qualified media production location.

Paragraph (5) provides that each qualified person must complete an annual report as required by Tax Code, §151.3415. Subparagraph (A) identifies the content which must be included in the report. Subparagraph (B) establishes the annual report periods. Subparagraph (C) provides a date when the reports are due to the comptroller's office. For ease of administration, it was determined that all reports due by qualified persons shall be due on the same date. September 30 was selected as a due date as according to Government Code, §485A.111(c), a media produc-

tion development zone approval and qualified media production location designation, as long as it has not been previously removed by the Texas Film Commission, remains in effect until September 1 of the final year of the approval or designation.

Subsection (k) explains that a purchaser may issue an exemption certificate in lieu of paying sales tax to claim the exemption. A cross-reference to §3.287 of this title (relating to Exemption Certificates) is provided for additional information.

Subsection (l) addresses taxability of items purchased tax-free pursuant to the exemptions available in this section and used in a taxable manner. Paragraph (1) explains that sales or use tax is due when taxable items purchased tax-free under the exemptions in this section are used in a way that does not qualify for the exemption. Cross-references to §3.287 of this title and to Tax Code, §151.155 (Exemption Certificate) are provided for guidance in calculating the tax due on the non-exempt use of an item purchased tax-free. Paragraph (2) states that records must be maintained to document when an item purchased tax-free is used in a taxable manner and to document the payment of sales or use tax due on such use.

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

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current statutes and current agency policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

The new section is proposed under Tax Code §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2 (State Taxes).

The new section implements Tax Code, §151.3185 (Property Used in the Production of Motion Pictures or Video or Audio Recordings and Broadcasts) and Tax Code, §151.3415 (Items Sold to or Used to Construct, Maintain, Expand, Improve, Equip, or Renovate Media Production Facilities at Media Production Locations; Report).

§3.350. Master Recordings and Broadcasts.

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

(1) Audio recording--The fixation of signals representing a series of musical, spoken, or other sounds, but not including motion pictures, by any method now known or later developed.

(2) Broadcast--For the purposes of this section only, the dissemination of audio signals, video signals, or a combination of both audio and video signals in the form of radio or television programming to the public over the segment of the radio spectrum used for broadcasting, and the exhibition of video programming with or without the use of wires to subscribing or paying customers.

(3) C.F.R.--Code of Federal Regulations.

(4) C.F.R.-compliant digital audio broadcast equipment--Tangible personal property that is sold to the permittee or licensee of an AM or FM station that commences interim hybrid In-band On-Channel (IBOC) digital audio broadcast (DAB) pursuant to 47 C.F.R. §73.404(a) (Interim Hybrid IBOC DAB Operation), if the tangible personal property is necessary for the licensee or permittee to provide the broadcast services described by 47 C.F.R. §73.403 (Digital Audio Broadcasting Service Requirements) or 47 C.F.R. §73.404.

(5) C.F.R.-compliant digital television transmission equipment--Tangible personal property that is sold to a digital television broadcast station permittee or licensee to which 47 C.F.R. §73.624(b) applies, if the tangible personal property is necessary for the permittee or licensee to comply with 47 C.F.R. §73.682(d) (Digital Broadcast Television Transmission Standard).

(6) Distribute--For purposes of this section only, to supply copies of a master recording to persons who will sell, license, further distribute, broadcast, or exhibit copies of the master recording. For example, copies of a motion picture are distributed to movie theaters which exhibit the motion pictures to the public for consideration.

(7) Exhibit--

(A) To play or perform a master recording or live program at a place open to the public or at any place where a substantial number of persons, outside of a normal circle of a family and its social acquaintances, is gathered; or

(B) to transmit or otherwise communicate a performance of the master recording or live program to the public by any means, whether the members of the public capable of receiving the performance receive it in the same place or in separate places and at the same or different times.

(8) License--To authorize or otherwise grant legal permission to use a copy of a master recording in a limited manner, for a limited purpose, or both. For example, the owner of a master audio recording may license a copy of the master audio recording for use as part of an advertising campaign in a specific geographic area for a specified period of time.

(9) Live program--Radio or television content that is not pre-recorded and that is broadcast by a producer of cable programs or a radio or television station licensed by the Federal Communications Commission.

(10) Master recording--The principal media on which images, sound, or a combination of images and sound are first fixed, and from which copies are intended to be reproduced for the purpose of obtaining consideration from the ultimate sale, license, distribution, broadcast, or exhibition of the copies. A master recording may be an audio recording, motion picture recording, video recording, or a combination of these.

(A) Master recordings include feature films, television programs, television commercials, corporate films, infomercials, recordings of live performances, musical albums, and other projects that are intended for commercial distribution, even if commercial distribution is very limited, such as the distribution of training or industrial films.

(B) Master recordings do not include training videos for in-house use, student films, wedding videos, recordings exhibited on

social media, and other recordings not intended to be copied for commercial distribution or commercial exhibition.

(C) A master recording may contain interactive software that allows a viewer to locate, see, or hear a segment of the master recording without having to see or hear the master recording in full.

(D) A master recording does not include video games even if the games contain recorded audio or visual sequences.

(11) Media production facility--A structure, building, or room used for the specific purpose of creating a moving image project. The term includes but is not limited to:

(A) a soundstage and scoring stage;

(B) a production office;

(C) an editing facility, an animation production facility, and a video game production facility;

(D) a storage and construction space; and

(E) a sound recording studio and motion capture studio.

(12) Motion picture recording--A series of related images stored in any method now known or later developed which, when shown in succession, together with any accompanying sounds, impart an impression of motion.

(13) Moving image project--A visual and sound production, including a film, television program, national or multistate commercial, or digital interactive media production. The term does not include a production that is obscene, as defined by Penal Code, §43.21 (Definitions).

(14) Producer--A person who owns the original rights to a master recording.

(15) Qualified media production location--A location in a media production zone that has been designated by the Texas Film Commission as a qualified media production location in accordance with Government Code, Chapter 485A (Media Production Development Zones).

(16) Qualified person--A person certified by the Texas Film Commission as a qualified person under Government Code, §485A.201 (Qualified person).

(17) Texas Film Commission--The division of the Office of the Governor of Texas, by whatever name called, that is assigned to administer and monitor the implementation of the Media Production Development Zone Act as provided in Government Code, Chapter 485A.

(18) Video game--An electronic game in which a player controls images on a video screen, television, or computer monitor.

(19) Video recording--A series of related images intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with any accompanying sounds, stored in any method now known or later developed.

(b) Master recordings.

(1) The sale of a master recording by the producer of the master recording is exempt from sales and use tax under this section.

(2) The sale of a copy of a master recording is taxable under Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax) as the sale of tangible personal property.

(3) A license of all or part of the rights to a master recording is not subject to tax under Tax Code, Chapter 151.

(c) Exempt items used in production.

(1) Except as provided in subsections (d) and (e) of this section, sales and use tax is not due on the purchase or use of the following items:

(A) tangible personal property that will become an ingredient or component part of a master recording or a live program; and

(B) tangible personal property or taxable services that are necessary or essential to, and used or consumed in or during, the production of a master recording or live program.

(i) Tangible personal property that is leased or rented is eligible for exemption described in this subparagraph regardless of the length of the lease or rental.

(ii) Taxable items used in pre-production activities do not qualify for the exemption under this section because they are not used or consumed in or during the production of the master recording or live program. Examples of equipment used in pre-production include equipment used in gathering news prior to the beginning of a television production and computers and software used in authoring or editing a script.

(2) The exemption in this subsection includes, but is not limited to:

(A) cameras, film, and film developing chemicals that are necessary and essential to and used or consumed in the production of a master recording or a live program;

(B) lights, props, sets, teleprompters, microphones, digital equipment, special effects equipment and supplies, and other equipment that is necessary and essential to and used or consumed directly in the production of a master recording or a live program; and

(C) audio or video routing switchers located in a production or recording studio that are necessary and essential to and used or consumed directly in the production of a master recording or a live program.

(d) Nonexempt items used in production.

(1) The following items do not qualify for exemption under this section even when used in the production of a master recording or a live program:

(A) office equipment or supplies;

(B) maintenance or janitorial equipment or supplies;

(C) machinery, equipment, or supplies used in sales or transportation activities;

(D) machinery, equipment, or supplies used in distribution activities, unless otherwise exempted by this section;

(E) taxable items that are used incidentally in the production of a master recording or a live program;

(F) telecommunications equipment and services;

(G) transmission equipment, other than qualifying C.F.R.-compliant digital television transmission equipment and qualifying C.F.R.-compliant digital audio broadcast equipment;

(H) security services;

(I) motor vehicle parking services; and

(J) food ready for immediate consumption.

(2) Examples of nonexempt items used in production include, but are not limited to: tents for catering or staging areas; office furniture; crew jackets; flowers for dressing rooms; catering or other food ready for immediate consumption; bodyguard services; script typing; landscape maintenance; director's chairs; gas cans; ladders; shipping cases; battery chargers; mobile offices; pagers, cellular phones, and other communication equipment (except those used exclusively on the set); telecommunications services such as mobile phone service; waste removal (including waste that will be recycled); wardrobe racks; and alcoholic and non-alcoholic beverages.

(3) Taxable items are not exempt under this section when used in the production of a master recording for broadcast, or in the production of a live program for broadcast, if the master recording or live program is not intended to be broadcast to either the general public or to cable television service subscribers or paying customers.

(e) Transportation equipment. Motor vehicles, including trailers and semitrailers, are subject to motor vehicle sales tax and are exempt from sales and use tax imposed by Tax Code, Chapter 151 (Limited Sales, Excise, and Use Tax). For more information on the taxes due on motor vehicles, see Subchapter F, of this chapter (Motor Vehicle Sales Tax). Other types of machinery, equipment, or supplies used in transportation activities, such as helicopters, do not qualify for exemption from sales and use tax under this section.

(f) C.F.R.-compliant digital television transmission.

(1) The purchase of C.F.R.-compliant digital television transmission equipment by a digital television broadcast station permittee or licensee is exempt from sales and use tax. The exemption applies whether the equipment is used for television transmission in high or standard definition.

(2) Equipment that may be used for both analog and digital television transmission is exempt if it is necessary to comply with 47 C.F.R. §73.682(d) (TV transmission standards). Transmission equipment that is not necessary for digital television transmission, or that can be used only for analog transmission, is not exempt under this section.

(3) An Advanced Television Systems Committee (ATSC) encoder is exempt.

(4) Entities that are not subject to the relevant provisions of 47 C.F.R. Part 73 (Radio Broadcast Services), such as cable and satellite television providers, may not make exempt purchases under this subsection.

(g) C.F.R.-compliant digital audio broadcast equipment.

(1) The purchase of C.F.R.-compliant digital audio broadcast equipment by a radio broadcast station permittee or licensee is exempt from sales and use tax.

(2) Equipment used to transmit both over-the-air digital audio programming at no direct charge to listeners and over-the-air digital audio programming for a fee to listeners is exempt.

(3) Equipment used solely to transmit over-the-air digital audio programming for a fee to listeners is not exempt.

(h) Exemptions for repair and maintenance. Repair or maintenance of tangible personal property that is exempted under this section is also exempt, unless the tangible personal property is installed into realty and has lost its identity as tangible personal property. For information on the repair or maintenance of items that become real property after installation, see §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance). For information on new construction that incorporates materials exempted under this section see §3.291 of this title (relating to Contractors).

(i) Exemptions for natural gas and electricity.

(1) Natural gas and electricity used in the production of a master recording are exempt.

(2) Natural gas and electricity are taxable when used for a non-exempt purpose. For example, an entertainment venue provides beverages to customers during live performances. The venue also makes master recordings of the live performances. The electricity used for the beverage refrigeration equipment is not exempt; however the electricity used to power the recording equipment is exempt under this subsection. Non-exempt purposes include, but are not limited to, the following:

(A) administrative or office operations;

(B) marketing;

(C) transportation; or

(D) warehousing.

(3) A predominant use study is required to determine the exempt and non-exempt use of natural gas or electricity measured by a single meter. See §3.295 of this title (relating to Natural Gas and Electricity).

(j) Exemptions for qualified media production locations.

(1) The exemption in this subsection is available only to a qualified person acquiring a taxable item for use at a qualified media production location. Information on becoming certified as a qualified person or a qualified media production location is available through the Texas Film Commission.

(2) The sale, lease, or rental of a taxable item, including nonresidential repair or remodeling services, is exempt if the item is used:

(A) for the construction, maintenance, expansion, improvement, or renovation of a media production facility at a qualified media production location;

(B) to equip a media production facility at a qualified media production location; or

(C) for the renovation of a building or facility at a qualified media production location that is to be used exclusively as a media production facility.

(3) Repair or maintenance of tangible personal property used to equip a media production facility at a qualified media production location is exempt during the exemption period described in paragraph (4) of this subsection.

(4) The exemption in this subsection is temporary.

(A) The exemption begins when both the qualified person and related qualified media production location are certified by the Texas Film Commission.

(B) The exemption ends on the earlier of:

(i) the expiration date identified in the approval documents issued for the certification of the qualified media production location;

(ii) the expiration date identified in the approval documents issued for the certification of the qualified person; or

(iii) the date the certification of either the qualified person or the qualified media production location is revoked.

(C) In no event shall the exemption period extend for more than two years from the earlier of the date of certification of the qualified person or the date of certification of the related qualified media production location.

(5) Reports required. Each qualified person is required to submit a report for each qualified media production location.

(A) The report must be in the form and manner prescribed by the comptroller and must contain the following information:

(i) the name, address, and comptroller-issued taxpayer identification number of the qualified person;

(ii) the name, address, and, if applicable, comptroller-issued taxpayer identification number of the qualified media production location;

(iii) a description of the project or activity conducted by the qualified person at the qualified media production location;

(iv) the date of certification and the expiration date of the certification of the qualified person and related qualified media production zone as identified in the approval documents issued by the Texas Film Commission;

(v) a statement that no items were purchased tax-free under the exemption in this subsection during the period covered by the report, if applicable; or for each item purchased tax-free under this exemption the following information:

(I) the name, address, and comptroller-issued taxpayer identification number of the seller;

(II) the date of purchase;

(III) the name or description of the item, or like items;

(IV) the purpose or brief explanation of how the item, or like items, were, or are to be, used;

(V) the sales price of the item;

(VI) the lease or rental terms, if applicable; and

(VII) the current location of the item.

(B) Report periods. The initial report covers the time period from the date of certification of the qualified person and the related qualified media production location through August 31. For example, if the qualified person and the related qualified media production location received certification on April 1, the initial report period is April 1 through August 31. Subsequent reports cover the time period from September 1 through August 31 of the following year.

(C) The report is due September 30 each year. If the due date falls on a Saturday, Sunday, or legal holiday, the report will be due the next business day.

(k) Exemption certificates. The exemptions under this section may be claimed by providing the seller with a properly completed exemption certificate at the time of purchase in lieu of paying sales and use tax. See §3.287 of this title (relating to Exemption Certificates).

(l) Divergent use.

(1) When a taxable item purchased tax-free under a properly completed exemption certificate is used in a taxable manner, sales and use tax is due. The tax is calculated based on the fair market rental value of the tangible personal property for the period of time used in the taxable manner. See §3.287 of this title and Tax Code, §151.155 (Exemption Certificate).

(2) Records must be maintained to document the taxable use of an item purchased tax-free, and the payment of sales and use tax due on such use.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605797
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §403.5

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 403, Criminal Convictions and Eligibility for Certification, concerning, §403.5, Access to Criminal History Record Information.

The purpose of the proposed amendments is to better define the procedures for submittal of a request for early review of information by an individual for certification.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is that the new language will clarify the responsibilities of both the individual submitting the review request as well as that of the agency. There will be no effect on micro or small businesses or persons required to comply with the amendments as proposed.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *info@tcfp.texas.gov.* Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel; and §419.0325 which allows the commission to obtain criminal history record information.

The proposed amendments implement Texas Government Code, Chapter 419, §419.008, §419.032 and §419.0325.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;

(2) with written consent of the person being investigated;

(3) in a criminal proceeding; or

(4) in a hearing conducted under the authority of the commission.

(c) Early review. A fire department that employs a person regulated by the commission, a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission certification program may seek the early review under this chapter of the person's present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by following the required procedure. [~~submitting the required forms and fee(s).~~] A decision by the commission based on an early review does not bind the commission if there is a change in circumstances. The following pertains to early reviews:

(1) The commission will complete its review and notify the requestor in writing concerning potential eligibility or ineligibility within 90 days following receipt of all required and necessary information for the review.

(2) A notification by the commission regarding the results of an early review is not a guarantee of certification, admission to any training program, or employment with a local government.

(3) A fee assessed by the commission for conducting an early review will be in an amount sufficient to cover the cost to conduct the review process, as provided in §437.19 of this title (relating to Early Review Fees).

(4) An early review request will be considered incomplete until the requestor submits all required and necessary information. Early review requests that remain incomplete for 90 days following receipt of the initial request will expire. If the request expires and an early review is still desired, a new request and fee must be submitted.

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

Filed with the Office of the Secretary of State on November 8, 2016.

TRD-201605753
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

CHAPTER 437. FEES

37 TAC §437.19

The Texas Commission on Fire Protection (the commission) proposes a new section to Chapter 437, Fees, concerning, §437.19, Early Review Fees.

The purpose of the proposed new section is to establish a fee for conducting an early review of an individual's criminal history to determine eligibility for certification which can devote a notable amount of staff time depending upon an individual's record.

Tim Rutland, Executive Director, has determined that for each year of the first five year period the proposed new section is in effect, there will be no significant fiscal impact to state government or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed new section is in effect, the public benefit from the passage is that individuals will know in advance if they are eligible for certification before enrolling in a training program or applying for certification. There will be no effect on micro or small businesses or persons required to comply with the proposal.

Comments regarding the proposal may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to *info@tcfp.texas.gov.* Comments will be reviewed and discussed at a future commission meeting.

The new section is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032 which allows the commission to appoint fire protection personnel; and §419.0325 which allows the commission to obtain criminal history record information.

The proposed new section implements Texas Government Code, Chapter 419, §§419.008, 419.032 and 419.0325.

§437.19. Early Review Fees.

A non-refundable fee of $75 will be charged for each early review conducted by the commission for the purpose of determining the eligibility of a person to be certified by the commission based upon a review of their criminal history.

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

Filed with the Office of the Secretary of State on November 8, 2016.

TRD-201605754
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 806. PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

The Commission proposes the repeal of the following sections of Chapter 806, relating to Purchases of Products and Services from People with Disabilities, as follows:

General, §806.1

Definitions, §806.2

Organization, §806.3

Ethical Standards, §806.4

Open Meetings; Public Testimony and Access, §806.5

Certification and Recertification of Community Rehabilitation Programs, §806.6

Contracting with Central Nonprofit Agencies, §806.7

Product Specifications and Exceptions, §806.8

Determination of Fair Market Value, §806.9

Consumer Information; Complaints and Resolution, §806.10

Records, §806.11

Performance Standards for a Central Nonprofit Agency, §806.12

Recognition and Approval of Community Rehabilitation Program Products and Services, §806.13

The Commission proposes new sections to Chapter 806, relating to Purchases of Products and Services from People with Disabilities, as follows:

Subchapter A. General Provisions Regarding Purchases of Products and Services from People with Disabilities, §806.1 and §806.2

Subchapter B. Advisory Committee Responsibilities, Meeting Guidelines, §806.21 and §806.22

Subchapter C. Central Nonprofit Agencies, §806.31 and §806.32

Subchapter D. Community Rehabilitation Programs, §806.41

Subchapter E. Products and Services, §§806.51 - 806.53

Subchapter F. Complaints, Vendor Protests, Resolutions, §806.61 and §806.62

Subchapter G. Disclosure of Records, §806.71

Subchapter H. Reports; Plans, §806.81 and §806.82

Subchapter I. Political Subdivisions, §806.91 and §806.92

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 amendments to the Chapter 806 rules is to comply with the requirements of Senate Bill (SB) 212, enacted by the 84th Texas Legislature, Regular Session (2015), which abolished the Texas Council on Purchasing from People with Disabilities (Council). Section 29(a) of SB 212 §29(a) transferred all former Council powers and duties to the Texas Workforce Commission (Agency) to administer the Purchasing from People with Disabilities (PPD) program effective September 1, 2015. Per SB 212, the rules of the Texas Comptroller of Public Accounts (comptroller) were transferred to the Agency and placed in 40 Texas Administrative Code Chapter 806.

SB 212's primary impact was the abolishment of the Council. The Council was replaced with an advisory committee appointed by the Commission, which serves in a different capacity.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

The Commission proposes new Subchapter A, General Provisions Regarding Purchases of Products and Services from People with Disabilities, as follows:

§806.1. General

New §806.1 establishes the purpose of the Purchases of Products and Services from People with Disabilities state use program and names the Agency as the administering agency. The Commission proposes to modify §806.1 to remove references to "the Texas Council on Purchasing from People with Disabilities (TCPPD)" and replace them with "Commission," pursuant to SB 212.

§806.2. Definitions

New §806.2(1) defines "Appreciable contribution." The Agency proposes to replace the term "persons" with "individuals" pursuant to SB 212, to align with statute and the Agency's rule structure.

New §806.2(2) adds a new definition for "Advisory Committee" pursuant to SB 212, to align with statute and the Agency's rule structure.

New §806.2(3) defines "Central nonprofit agency." Based on a review of the Council's rules transferred from the Comptroller, the Agency retains this definition, replaces the term "Council" with "Agency" per SB 212, and renumbers accordingly.

New §806.2(4) defines "Chapter 122." Based on a review of the Council's rules transferred from the Comptroller, the Agency retains this definition and renumbers accordingly.

New §806.2(5) defines "Community rehabilitation program." Based on a review of the Council's rules transferred from the Comptroller, the Agency modifies this definition per SB 212 and renumbers accordingly.

The previous §806.2(6) definition of "The Texas Council on Purchasing from People with Disabilities" has been removed, as it is no longer applicable to this chapter.

New §806.2(6) defines "Comptroller." Based on a review of the Council's rules transferred from the Comptroller, the Agency retains this definition and renumbers accordingly.

New §806.2(10) defines "State use program." Based on a review of the Council's rules transferred from the Comptroller, the Agency retains this definition, replaces the term "Council" with "Agency" and the term "persons" with "individuals" per SB 212.

New §806.2(11) defines "Value added." Based on a review of the Council's rules transferred from the Comptroller, the Agency retains this definition and replaces the term "persons" with "individuals" per SB 212.

Subchapter B. ADVISORY COMMITTEE RESPONSIBILITIES AND MEETING GUIDELINES

The Commission proposes new Subchapter B, Advisory Committee Responsibilities, Meeting Guidelines, as follows:

§806.21. Advisory Committee

New §806.21 provides language establishing the newly formed advisory committee, states the purpose of the advisory committee, and sets forth the responsibilities of the Agency, committee, and Commission, pursuant to SB 212.

§806.22. Open Meetings: Public Testimony and Access

New §806.22 sets forth the requirements of the Committee to comply with the Open Meetings Law, Open Meetings Act, and Texas Government Code, Chapter 2001.

Subchapter C. CENTRAL NONPROFIT AGENCIES

The Commission proposes new Subchapter C, Central Nonprofit Agencies, as follows:

§806.31. Contracting with Central Nonprofit Agencies

New §806.31 sets forth the contract requirements and responsibilities of the Agency, Commission, and CNAs.

§806.32. Performance Standards and Goals for a Central Nonprofit Agency

New §806.32 sets forth the performance standards, goals, and requirements of CNAs.

Subchapter D. COMMUNITY REHABILITATION PROGRAMS

The Commission proposes new Subchapter D, Community Rehabilitation Programs, as follows:

§806.41. Certification and Recertification of Community Rehabilitation Programs

New §806.41 sets forth the criteria and requirements the Commission and Agency will use to certify and recertify CRPs.

Subchapter E. PRODUCTS AND SERVICES

The Commission proposes new Subchapter E, Products and Services, as follows:

§806.51. Product Specifications and Exceptions

New §806.51 provides language that products must meet certain specifications in order to be available for purchase by state agencies under Texas Human Resources Code §122.014 and §122.016.

§806.52. Determination of Fair Market Value

New §806.52 provides language that products and services are required to be at a price determined to be the fair market price under Texas Human Resources Code §122.007 and §122.015.

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services

New §806.53 sets forth the criteria and requirements the Agency will use to approve products and services to be available for purchase.

Subchapter F. COMPLAINTS, PROTESTS, RESOLUTIONS

The Commission proposes new Subchapter F, Complaints, Vendor Protests, Resolutions, as follows:

§806.61. Consumer Information; Complaints and Resolution

New §806.61 sets forth the process for filing complaints and duties of the Agency to resolve complaints.

§806.62. Vendor Protests.

New §806.62 sets forth the process for disputing a solicitation or award of a contract and duties of the Agency to resolve protests.

Subchapter G. DISCLOSURE OF RECORDS

The Commission proposes new Subchapter G, Disclosure of Records, as follows:

§806.71. Records

New §806.71 sets forth the requirements and duties of the Agency to handle records.

Subchapter H. Reports; Plans

The Commission proposes new Subchapter H, Reports; Plans, as follows:

§806.81. Annual Financial Report

New §806.81 sets forth the requirement of the Agency to prepare an annual financial report and file with the governor and the presiding officer of each house of the legislature under Texas Human Resources Code §122.022.

§806.82. Strategic Plan: Final Operating Plan

New §806.82 sets forth the requirement for the Agency to prepare a strategic plan and a final operating plan relating to the Agency's and Commission's activities under this chapter, as required by Texas Government Code, Chapter 2054, Subchapter E under Texas Human Resources Code §122.024.

Subchapter I. Political Subdivisions

The Commission proposes new Subchapter I, Political Subdivisions, as follows:

§806.91. Procurement for Political Subdivisions

New §806.91 sets forth the requirement for political subdivisions to follow procurement rules as required by Texas Human Resources Code §122.017, relating to procurement for political subdivisions.

§806.92. Political Subdivisions Excluded

New §806.92 sets forth the requirement of excluded political subdivisions to follow procurement rules as required by Texas Human Resources Code §122.018, relating to political subdivisions excluded.

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 and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and 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 individuals 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.

Doyle Fuchs, 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, Deputy Director, Workforce Solutions, 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 ensure state agencies purchase products and services through businesses that employ people with disabilities.

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

PART IV. COORDINATION ACTIVITIES

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 June 30, 2016. The Commission also conducted a conference call with Board executive directors and Board staff on July 8, 2016, to discuss the concept paper. 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.

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.*

40 TAC §§806.1 - 806.13

The rules are repealed 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 proposed repeals affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.1. General.
§806.2. Definitions.
§806.3. Organization.
§806.4. Ethical Standards.
§806.5. Open Meetings; Public Testimony and Access.
§806.6. Certification and Recertification of Community Rehabilitation Programs.
§806.7. Contracting with Central Nonprofit Agencies.
§806.8. Product Specifications and Exceptions.
§806.9. Determination of Fair Market Value.
§806.10. Consumer Information; Complaints and Resolution.
§806.11. Records.
§806.12. Performance Standards for a Central Nonprofit Agency.
§806.13. Recognition and Approval of Community Rehabilitation Program Products and 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.

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605767
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER A. GENERAL PROVISIONS REGARDING PURCHASES OF PRODUCTS AND SERVICES FROM PEOPLE WITH DISABILITIES

40 TAC §806.1, §806.2

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.1. General.
The Texas Workforce Commission is responsible for fulfilling the purpose of Chapter 122 of the Texas Human Resources Code, which is to:

(1) further the state's policy of encouraging and assisting individuals with disabilities to achieve maximum personal independence by engaging in useful productive employment activities; and

(2) provide state agencies, departments, and institutions and political subdivisions of the state with a method for achieving conformity with requirements of nondiscrimination and affirmative action in employment matters related to individuals with disabilities.

§806.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. "Agency" and "Commission" are defined in §800.2 of this title, relating to Definitions.

(1) Appreciable contribution--The term used to refer to the substantial work effort contributed by individuals with disabilities in the reforming of raw materials, assembly of components or packaging of bulk products in more saleable quantities, by which value is added into the final product offered for sale.

(2) Advisory committee--Advisory committee established by the Commission as described in Texas Human Resources Code §122.0057.

(3) Central nonprofit agency (CNA)--An agency designated as a central nonprofit agency under contract with the Agency pursuant to Texas Human Resources Code §122.019.

(4) Chapter 122--Chapter 122 of the Texas Human Resources Code, relating to Purchasing from People with Disabilities.

(5) Community rehabilitation program (CRP)--A government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.

(6) Comptroller--The Comptroller of Public Accounts.

(7) Direct labor--All work required for preparation, processing, and packaging of a product, or work directly relating to the performance of a service, except supervision, administration, inspection, or shipping products.

(8) Disability--A mental or physical impairment, including blindness that impedes a person who is seeking, entering, or maintaining gainful employment.

(9) Exception--Any product or service approved for the state use program purchased from a vendor other than a CRP because the state use product or service does not meet the applicable requirements as to quantity, quality, delivery, life cycle costs, and testing and inspection requirements pursuant to Texas Government Code §2155.138 and §2155.069 or as described in Texas Human Resources Code §122.014 and §122.016.

(10) State use program--The statutorily authorized mandate requiring state agencies to purchase, on a noncompetitive basis, the products made and services performed by individuals with disabilities, which have been approved by the Agency, pursuant to Texas Human Resources Code, Chapter 122 and which also meet the requirements of Texas Government Code, §2155.138 and §2155.069. This program also makes approved products and services available to be purchased on a noncompetitive basis by any political subdivision of the state.

(11) Value added--The labor of individuals with disabilities applied to raw materials, components, goods purchased in bulk form resulting in a change in the composition or marketability of component materials, packaging operations, and/or the servicing tasks associated with a product. Pass-throughs are not allowed; therefore, solely affixing a packaging label to a commodity does not qualify.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605768
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER B. ADVISORY COMMITTEE RESPONSIBILITIES, MEETING GUIDELINES

40 TAC §806.21, §806.22

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.21. Advisory Committee.

(a) The advisory committee (committee), as described in Texas Human Resources Code §122.0057, shall assist the Commission in establishing:

(1) performance goals for the program administered under this chapter; and

(2) criteria for certifying a CRP for participation in the program administered under this chapter.

(b) The committee shall:

(1) establish specific objectives for the program administered under this chapter that are appropriate given the program's status as one of several employment-related services the state offers to individuals with disabilities;

(2) develop performance measures that may be used by the Agency to evaluate whether the program is meeting the objectives established under paragraph (1) of this subsection; and

(3) recommend criteria for certifying CRPs for participation in the program.

(c) In developing the performance measures under subsection (b) of this section, the advisory committee must consider the following factors as applicable to the program administered under this chapter:

(1) The percentage of total sales revenue attributable to the program as:

(A) paid in wages to individuals with disabilities; and

(B) spent on direct training and professional development services for individuals with disabilities;

(2) The average hourly wage earned by an individual participating in the program;

(3) The average annual salary earned by an individual participating in the program;

(4) The number of individuals with disabilities participating in the program paid less than minimum wage and occupations into which such individuals are placed;

(5) The average number of hours worked each week by an individual with a disability who participates in the program;

(6) The percentage of individuals with disabilities who participate in the program and who are placed into competitive positions, including competitive management or administrative positions within CRPs; and

(7) The percentage of work performed by individuals with disabilities who participate in the program that is purely repackaging labor.

(d) The Committee shall provide input to the Commission in adopting rules applicable to the program administered under this chapter relating to the employment-first policies described in Texas Government Code §531.02447 and §531.02448.

(e) The Agency shall provide administrative support to the Committee.

(f) The Committee is not subject to Texas Government Code, Chapter 2110.

§806.22. Open Meetings: Public Testimony and Access.

The Committee, established under Texas Human Resources Code §122.0057, is subject to the requirements of the Open Meetings Law, Texas Government Code, Chapter 551, the Open Meetings Act, Texas Government Code, Chapter 552, and Texas Government Code, Chapter 2001.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605770
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER C. CENTRAL NONPROFIT AGENCIES

40 TAC §806.31, §806.32

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.31. Contracting with Central Nonprofit Agencies.

(a) The Agency may select and contract with one or more CNAs and shall contract through a request for proposals for a period not to exceed five years to perform, at a minimum, the duties set forth in Texas Human Resources Code §122.019(a) and (b).

(b) The management fee rate charged by a CNA for its services to a Community Rehabilitation Program (CRP) and its method of calculation must be approved by the Commission. The maximum management fee rate must be reviewed on an annual basis.

(c) A percentage of the management fee described in subsection (b) of this section shall be paid to the Agency and is subject to Texas Human Resources Code §122.023. The percentage shall be set by the Commission in the amount necessary to reimburse the general revenue fund for direct and reasonable costs incurred by the Comptroller and the Agency in administering the Comptroller's and the Agency's duties under this chapter, including any costs associated with providing support to the Committee.

(d) In accordance with Texas Human Resources Code §122.019(c), the Agency shall annually review services by and the performance of a CNA and the revenue required to accomplish the program. The purpose of the review shall be to determine whether a CNA has complied with statutory requirements, contract requirements, and performance standards set forth in §806.32 of this title (relating to performance standards for a CNA).

(e) Following the review of a CNA as required by Texas Human Resources Code §122.019(d), the Agency may approve the performance of the CNA and the continuation of the contract through its termination date.

(f) For the effective administration of this chapter, the CNA will provide to the Agency, no later than 15 days after the end of each federal fiscal quarter, the following information regarding CRPs that have contracted with the CNA:

(1) For CRPs:

(A) a collective executive summary of the CRPs annual state use program evaluations;

(B) the number of individuals with disabilities, according to their type of disability, who are employed in CRPs participating in the programs established by this chapter or who are employed by businesses or workshops that receive supportive employment from CRPs;

(C) the amount of annual wages paid to an individual participating in the program in a format determined by the Agency;

(D) a summary of the sale of products offered by the CRPs;

(E) a list of products and/or services offered by a CRP;

(F) the geographic distribution of CRPs;

(G) the number of individuals without disabilities who are employed in CRPs under this chapter; and

(H) the average and range of weekly earnings for individuals with disabilities and individuals without disabilities who are employed in CRPs under this chapter; and

(2) from each CRP data on individual outplacement or supported employment to include:

(A) the number of individuals in outplacement employment;

(B) the hourly wage range;

(C) the range of hours worked; and

(D) the number of individuals with disabilities employed, listed by primary type of disability.

(g) In accordance with Texas Human Resource Code §122.019(c) and §122.019(d), a CNA will provide or make available to the Agency:

(1) quarterly reports for each calendar quarter of its contract of sales of products or services, wages paid and hours worked by individuals with disabilities for CRPs participating in the state use program;

(2) quarterly reports for each calendar quarter listing CRPs that do not meet criteria for participation in the state use program and the reasons that each CRP listed does not meet the criteria;

(3) at least once a year by October 31, and prior to any review and/or renegotiation of the contract:

(A) an updated marketing plan;

(B) a proposed annual budget with estimated sales, commissions, and expenses;

(C) a program budget with details on how the expected revenue and expenses will be allocated to directly support and expand the state use program and other programs that expand direct services and/or the enhancement of employment opportunities for individuals with disabilities; and

(D) an audited annual financial statement that shall include information on FDIC coverage of all cash balances, earnings attributed to the management fee for the state use program, accounts receivable, cash reserves, line of credit borrowings, interest payments, bad debt, administrative overhead and any detailed supporting documentation requested by the Agency;

(4) quarterly reports of categories of expenditures in reporting format approved by the Agency;

(5) records in accordance with Texas Human Resources Code §122.009(a) and §122.0019(d) for audit purposes, consistent with Texas Government Code, Chapter 552, the "Public Information Act"; and

(6) any other information the Agency requests as set forth in this chapter.

(h) Duties of a CNA include, but are not limited to, those listed in Texas Human Resources Code §122.019(a).

(i) The services of a CNA may include marketing and marketing support services, such as those identified in §122.019(b). Other duties as designated by the Agency may include:

(1) establishing a payment system with a goal to pay CRPs within fourteen (14) to twenty-one (21) calendar days, but not less than thirty (30) days of completion of work and proper invoicing;

(2) resolving contract issues and/or problems as they arise between the CRPs and customers of the program, referring those that cannot be resolved to the Agency;

(3) maintaining a system that tracks and monitors product and service sales; and

(4) tracking and reporting quality and delivery times of products and services.

(j) Each year by October 31, a CNA will establish performance goals for the next fiscal year in support of objectives set by the Commission in §806.21(h).

(k) The Agency may terminate a contract with a CNA if the Agency:

(1) finds substantial evidence of the CNA's noncompliance with contractual obligations or of conflict of interest as defined by federal and state laws; and

(2) has provided at least 30 days written notice to that CNA of the termination of the contract.

(l) The Agency may request an audit by the state auditor of:

(1) the management fee set for any CNA; or

(2) the financial condition of any CNA.

(m) The Commission must annually review the management fees the CRPs are charged by the CNAs. The annual review process includes:

(1) sending notice to affected parties, including CNAs;

(2) soliciting and considering public comment; and

(3) reviewing documentation provided by a CNA, CRP, or the public in support or opposition of a proposed management fee rate change.

(n) An individual may not operate a CRP and at the same time contract with the Agency as a CNA.

§806.32. Performance Standards and Goals for a Central Nonprofit Agency.

(a) A CNA shall meet performance standards in carrying out the terms and conditions of the contract.

(b) Operating pursuant to statute and rules, a CNA must manage and coordinate the day-to-day operation of the state use program including, but not limited to, the following activities:

(1) Increase employment opportunities for individuals with disabilities by promoting employment counseling and placement services provided by CRPs;

(2) Increase employment opportunities for individuals with disabilities by researching new products, services, and markets; improving existing products and services; and reporting to the Agency on a quarterly basis the status of these activities;

(3) Provide superior customer relations by monitoring customer satisfaction with products and services, responding to customer complaints within one business day or less, and reporting to the Agency on a quarterly basis the level of consumer satisfaction for each CRP, based on complaints as to products or services provided, with a goal of incurring no more than five complaints per year that have not been resolved to customer satisfaction;

(4) Provide quarterly regional information workshops to promote the state use program throughout the year and across the state;

(5) Provide training programs to CRPs on the requirements to participate in the state use program, governmental contracting, and procurement procedures and laws;

(6) Resolve contract issues and/or problems as they arise between the CRPs, the CNA, and/or customers, referring those that cannot be resolved to the Agency and submitting quarterly status reports on issues and referrals;

(7) Provide an annual report that includes the CNA's audited financial statements, an updated strategic plan, and an updated projected schedule of expenses that details how the management fee is being allocated to directly support the state use program and what amount of funds are being devoted to expanding direct services to programs that enhance the lives of individuals with disabilities and what percentage of funds will be used for administrative overhead, such as salaries;

(8) Demonstrate compliance with state and federal tax laws and payroll laws by submitting quarterly reports of sales and taxes paid to the Texas Comptroller of Public Accounts and the Internal Revenue Service (IRS);

(9) Maintain a system in accordance with generally accepted accounting principles that will record information related to purchase orders, invoices, and payments to each CRP to facilitate the preparation and submission of the annual report;

(10) Create a database of state agency and political subdivision purchases to promote sales of state use program products and services;

(11) Conduct business ethically and submit detailed reports on a quarterly basis of any conflicts between the CRPs and the CNA;

(12) Create and maintain automated tracking and monitoring of product/service sales and submit quarterly reports to the Agency regarding delivery turnaround times and contract performance for each CRP;

(13) Respond to inquiries about individual sales and/or total sales within five business days or sooner and submit quarterly reports regarding the number of inquiries and average response time in conjunction with the report described in paragraph (11) of this subsection;

(14) Maintain knowledge of governmental contracting and procurement processes and laws;

(15) Provide general administration of the state use program with performance criteria and timely submission of reports required by these rules;

(16) Monitor CRP compliance and promptly report violations to the Agency, offering assistance as needed to achieve compliance; and

(17) Maintain and dispose of records in accordance with the laws and directives set forth by the Agency and submit any or all records requested within three weeks of the request. Disclosure to the public of any and all CNA records shall be subject to the Public Information Act.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605771
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER D. COMMUNITY REHABILITATION PROGRAMS

40 TAC §806.41

The new rule is proposed 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.41. Certification and Recertification of Community Rehabilitation Programs.

(a) No applicant for certification may participate in the state use program prior to the approval of certification.

(b) The Commission may recognize programs that are accredited by nationally accepted vocational rehabilitation accrediting organizations and approve CRPs that have been approved by a state's habilitation or rehabilitation agency.

(c) The Commission may delegate the administration of the certification process for CRPs to a CNA.

(d) An applicant for CRP certification must be a government or nonprofit private program operated under criteria established by the Commission and under which individuals with severe disabilities produce products or perform services for compensation.

(e) A certified CRP must:

(1) maintain payroll, human resource functions, accounting, and all relevant documentation showing that the employees who produce products or perform services under the state use program are individuals with disabilities;

(2) ensure that documentation includes approved disability determination forms that shall be subject to review at the request of the Agency or the CNA under authority from the Commission, with adherence to privacy and confidentiality standards applicable to such CRP and employee records; and

(3) maintain and dispose of records or documents required by the Agency, including contracts with other entities, in accordance with generally accepted accounting principles, and all laws relevant to the records.

(f) An applicant for certification must submit a completed application and the required documents to the Agency through the CNA for the state use program. Upon receipt, the CNA will verify the completeness and accuracy of the application. No application will be considered without the following documents:

(1) Copy of the IRS nonprofit determination under §501(c), when required by law;

(2) Copy of the Articles of Incorporation issued by the Secretary of State, when required by law;

(3) List of the board of directors and officers with names, addresses, and telephone numbers;

(4) Copy of the organizational chart with job titles and names;

(5) Proof of current insurance coverage in the form of a certificate of insurance specifying each and all coverages for the CRP's liability insurance, auto insurance for vehicles owned or leased by the CRP for state use contract purposes, and workers' compensation insurance coverage or legally recognized equivalent coverage, if applicable. Such insurance shall be carried with an insurance company authorized to do business in the State of Texas, and written notice of cancellation or any material change in insurance coverage will be provided to the CNA 10 business days in advance of cancellation or change;

(6) Fire inspection certificate issued within one year of the formal consideration of the CRP application, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(7) Copy of the building inspection certificate or certificate of occupancy, if required by city, county, or state regulations, for each location where customers will be served or where individuals with disabilities will be employed, or a statement of unavailability from the appropriate city, county, or state entity;

(8) Copy of the wage exemption certificate (WH-228) if below minimum wages will be paid to customers or to individuals with disabilities who will be employed, and a statement of explanation of circumstances requiring subminimum wages; and

(9) Notarized statement that the CRP agrees to maintain compliance with the requirement that at least 75 percent of the CRP's total hours of direct labor, for each contract, necessary to perform ser-

vices or reform raw materials, assemble components, manufacture, prepare, process and/or package products will be performed by individuals with documented disabilities consistent with the definition set forth in this chapter. If a CRP intends to seek a waiver from the 75 percent requirement of the CRP's total hours of direct labor for a contract, the waiver request must be submitted with the application for approval.

(g) The Agency shall review each complete application and all required documentation and, if acceptable, forward its recommendations to the Commission for approval. Once approved, the Agency will notify the CRP in writing and assign the CRP a certification number.

(h) A CRP may protest a recommendation of non-approval pursuant to the Agency's appeal process in §806.61.

(i) To continue in the program, each CRP must be recertified by the Commission every three years. The recertification process requires submission of all previously requested documentation, a review of reports submitted to the CNA, and a determination that the CRP has maintained compliance with the stated requirements of the state use program. The Commission shall establish a schedule for the recertification process and the CNA shall assist each CRP as necessary to attain recertification. The CRP, after notification, shall submit within 30 days the application for recertification and required documents to the CNA. If the CRP fails to do so, the Agency may request a written explanation and/or the appearance of a representative of the CRP before the Agency. If the CRP fails to respond in a timely manner, the Agency may consider the suspension of all state use program contracts until the recertification process has been completed and approval has been attained.

(j) The CRP shall submit quarterly wage and hour reports to the CNA. These reports are due no later than the last day of the month following the end of the quarter. If the CRP fails to submit reports on time, the Agency may request a representative of the CRP to appear before the Agency. The Agency may consider the suspension of the CRP's state use program contracts if compliance is not achieved in a consistent and timely manner.

(k) CRPs shall maintain compliance with the state use program regarding percentage requirements related to administrative costs, supply costs, wages, and hours of direct labor necessary to perform services and/or produce products. Compliance will be monitored by the CNA and/or the Agency, and violations will be reported promptly to the Agency. A violation will result in a warning letter from the CNA or Agency, which will then offer assistance as needed to achieve compliance. A CRP that fails to meet compliance requirements, without a waiver from the Agency, for two quarters in any four-quarter period, shall submit a written explanation and a representative of the CRP will be requested to appear before the Agency. State use program contracts may be suspended and/or certification revoked if compliance is not immediately and consistently maintained. To attain reinstatement, the CRP must apply for recertification following the procedures outlined in this chapter.

(l) The Agency may review or designate a CNA or third party to review any CRP participating in the state-use program to verify compliance with the requirements outlined in this chapter.

(m) A CRP must not serve, in whole or part, as an outlet or front for any entity whose purpose is not the employment of individuals with disabilities.

(n) A CRP shall promptly report any conflict of interest or receipt of benefit or promise of benefit to the Agency. The Agency will consider such reports on an individual basis. Verified instances of conflict of interest by a CRP may result in suspension of the CRP's eligibility to participate in the state use program and/or revocation of certification.

(o) The Commission, the Agency, individual members, the State of Texas, or any other Texas state agency will not be responsible for any loss or losses, financial or otherwise, incurred by a CRP should its product or services not be approved for the state use program as provided by 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 November 9, 2016.

TRD-201605772
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER E. PRODUCTS AND SERVICES

40 TAC §§806.51 - 806.53

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.51. Product Specifications and Exceptions.

(a) A product manufactured for sale through the Comptroller to any office, department, institution or agency of the state shall be manufactured or produced according to specifications developed by the Comptroller. If the Comptroller has not developed specifications for a particular product, the production shall be based on commercial or federal specifications in current use by the industry.

(b) Requisitions for products and/or services required by state agencies are processed by the Comptroller according to Comptroller rules.

(c) An exception from subsection (a) of this section may be made in any case as follows:

(1) Under the rules of the Comptroller, the product and/or service so produced or provided does not meet the reasonable requirements of the office, department, institution, or agency; or

(2) The requisitions made cannot be reasonably complied with through provision of products and/or services produced by individuals with disabilities.

(d) An office, department, institution, or agency may not evade purchasing products and/or services produced or provided by individuals with disabilities by requesting variations from standards adopted by the Comptroller when the products and/or services produced or provided by individuals with disabilities, per established standards, are reasonably adapted to the actual needs of the office, department, institution, or agency and comply with Texas Government Code §2155.138 and §2155.069.

(e) The Comptroller shall provide the Agency with a list of items known to have been purchased under the exceptions provided in subsection (c) of this section monthly, in the format adopted by the Agency.

(f) The Agency shall review submitted state agency exception reports made available by the Comptroller that list purchase products or services available from a CNA or CRP under this chapter, but purchased from another business that is not a CNA or CRP under this chapter.

(g) The Agency shall coordinate with the employee designated by each state agency to assist in attaining future compliance with this chapter, when an agency makes and reports an unjustified purchase or purchases of a product available under the programs authorized under this chapter.

§806.52. Determination of Fair Market Value.

(a) Pursuant to Texas Human Resources Code, Chapter 122 and Texas Government Code §2155.138, a suitable product and/or service that meets applicable specifications established by the state or its political subdivisions and that is available within the time specified must be procured from a CRP at the price determined by the Commission to be the fair market price under Texas Human Resources Code §122.007.

(b) The Agency shall review products, services, and price revisions submitted by the CNA on behalf of participating or prospective CRPs. Due consideration shall be given to the factors set forth in Texas Human Resources Code §122.015, as well as to the extent applicable, the amounts being paid for similar articles in similar quantities by state agencies purchasing the products or services not in the state use program.

(c) The Agency may also consider other criteria as necessary to determine the fair market price of the products and/or services, including, but not limited to:

(1) changing market conditions;

(2) frequency and volume of past state purchases of the particular products and/or services offered;

(3) request from a state agency that a CRP develop and provide a particular product and/or service;

(4) value added necessary to maximize the employment of people with disabilities; and/or

(5) quality comparison between similar products and/or services.

(d) The Comptroller shall provide the Agency with the information and resources necessary for the Agency to comply with this section.

§806.53. Recognition and Approval of Community Rehabilitation Program Products and Services.

(a) A CRP desiring to provide services under the state use program must comply with the following requirements to obtain approval from the Commission:

(1) A minimum of 35 percent of the contract price of the service must be paid to the individuals with disabilities who perform the service in the form of wages and benefits;

(2) Supply costs for the service must not exceed 20 percent of the contract price of the service;

(3) Administrative costs allocated to the service must not exceed 10 percent of the contract price for the service. At least 75 percent of the hours of direct labor for each contract, necessary to perform a service, must be performed by individuals with disabilities;

(4) The Agency may establish a different percentage if the Agency determines that a percentage greater than the 75 percent for the offered service is reasonable based on consideration of factors, including, but not limited to:

(A) past practices in a particular area;

(B) whether other CRPs providing the same or similar services have achieved the 75 percent requirement; and

(C) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field.

(5) Any necessary subcontracted services shall be performed to the maximum extent possible by other CRPs and in a manner that maximizes the employment of individuals with disabilities.

(b) A CRP must comply with the following requirements to obtain approval from the Commission for state use products:

(1) At least 75 percent of the hours of direct labor, for each contract, necessary to reform raw materials, assemble components, manufacture, prepare, process and/or package a product, must be performed by individuals with disabilities;

(2) Appreciable contribution and value added to the product by individuals with disabilities must be determined to be substantial on a product-by-product basis, based on requested documentation provided to the Agency upon application for a product to be approved for the state use program; and

(3) The Agency may establish a different percentage if the Agency determines that a percentage greater than the 75 percent for the offered product is reasonable based on consideration of factors, including, but not limited to:

(A) past practices in a particular area;

(B) whether other CRPs providing the same or similar products have achieved the 75 percent requirement;

(C) whether the Commission has established a policy goal to promote workplace integration for individuals with disabilities; and

(D) whether the Commission has established a policy goal to encourage employment of individuals with disabilities in a particular field.

(c) The rules governing the approval of products to be offered by a CRP apply to all items that a CRP proposes to offer to state agencies or political subdivisions, regardless of the method of acquisition by the agency, whether by sale or lease. A CRP must own any product it leases. A proposal by a CRP to rent or lease a product to a state agency is a proposal to offer a product, not a service, and the item offered must meet the requirements of these rules. If the product is offered for lease by the CRP, the unit cost of the product, for purposes of applying the standards set forth in these rules, is the total cost to the state agency of leasing the product over its expected useful life.

(d) Raw materials or components may be obtained from companies operated for profit, but a CRP must own any product that it offers for sale to state agencies or political subdivisions through the state use program and make an appreciable contribution to the product that accounts for a substantial amount of the value added to the product.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605773
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER F. COMPLAINTS, VENDOR PROTESTS, RESOLUTIONS

40 TAC §806.61, §806.62

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.61. Consumer Information; Complaints and Resolution.

(a) Complaints regarding matters under the Agency's jurisdiction, in accordance with Texas Human Resources Code, Chapter 122, shall be made in writing and addressed to the Agency for review and determination.

(b) The Agency shall maintain an information file regarding each complaint.

(c) If a written complaint is filed with the Agency, the Agency, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(d) The Agency shall provide to the individual filing the complaint, and to each individual who is a subject of the complaint, a copy of the Agency's policies and procedures relating to complaint investigation and resolution.

(e) Any product or service may be removed or temporarily suspended from the state use program after review and/or investigation of a filed complaint, if the Agency determines that a CRP is:

(1) providing products that fail to meet specifications;

(2) failing to make a delivery as promised;

(3) making unauthorized substitutions;

(4) misrepresenting merchandise;

(5) failing to make satisfactory adjustments when required; or

(6) taking unethical actions; or

(7) non-complying with other Agency rules or contract.

(f) A product or service that has been temporarily suspended may be reinstated by promptly correcting the reason(s) for suspension. A failure to make the necessary correction promptly may result in the termination of the CRP's contract with the CNA.

(g) Complaints shall be resolved by the Agency.

§806.62. Vendor Protests.

(a) A protest shall be made in writing and received by the Agency within 10 working days after the protesting party knows, or should have known, of the occurrence of the action that is protested.

(b) A protest must include:

(1) a precise statement of the relevant facts;

(2) a statement of any issues (of law or fact) that the protesting party contends must be resolved; and

(3) a statement of the argument and authorities that the protesting party offers in support of the protest.

(c) A statement that copies of the protest have been mailed or delivered to the using entity and all other identifiable interested parties must be included. The program manager may settle and resolve the dispute over the solicitation or award of a contract at any time before the matter is submitted on appeal to the deputy executive director.

(d) If the protest is not resolved by mutual agreement, the program manager shall issue a written determination that resolves the protest.

(e) The protesting party may appeal a written determination by the program manager to the deputy executive director.

(f) The Agency shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the retention schedule of the Texas Department of Procurement and Support 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.

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605774
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER G. DISCLOSURE OF RECORDS

40 TAC §806.71

The new rule is proposed 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 proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.71. Records.

(a) The Agency shall access financial or other information and records from a CNA or a CRP if the Agency determines the information and records are necessary for the effective administration of this chapter and rules adopted under this chapter.

(b) Information and records must be obtained under subsection (a) of this section in recognition of the privacy interest of individuals employed by CNAs or CRPs. The information and records may not be released or made public on subpoena or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) regarding a compensation package of any CNA employee or subcontractor if determined by the Commission to be relevant to the administration of this chapter.

(c) No records belonging to a CNA or a CRP may be accessed or released to anyone, including advisory committee members, outside entities, and individuals, unless disclosure is required under the Texas Public Information Act.

(d) The Agency or a CNA shall inspect a CRP for compliance with certification criteria established under Texas Human Resources Code §122.013(c).

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605775
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER H. REPORTS; PLANS

40 TAC §806.81, §806.82

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.81. Annual Financial Report.

(a) On or before November 1 of each year, the Agency shall prepare an annual financial report in the form prescribed by Texas Government Code §2101.011, relating to the Commission's activities, and Texas Human Resources Code §122.022 relating to reports, and file the report with the governor and the presiding officer of each house of the legislature.

(b) As part of the report filed under subsection (a) of this section, the Agency shall provide:

(1) the number of individuals with disabilities, by type of disability, who are employed in CRPs participating in the programs established by this chapter or who are employed by businesses or workshops that receive supportive employment from CRPs;

(2) the amount of annual wages paid to a person participating in the program;

(3) a summary of the sale of products offered by a CRP;

(4) a list of products and services offered by a CRP;

(5) the geographic distribution of the CRPs;

(6) the number of individuals without disabilities who are employed in CRPs under this chapter; and

(7) the average and the range of weekly earnings for individuals with disabilities and individuals without disabilities who are employed in CRPs under this chapter.

§806.82. Strategic Plan; Final Operating Plan.

The Agency shall prepare a strategic plan and a final operating plan relating to the Commission's activities under this chapter, as required by Texas Government Code, Chapter 2054, Subchapter E.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605776
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

SUBCHAPTER I. POLITICALSUBDIVISIONS

40 TAC §806.91, §806.92

The new rules are proposed 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 proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§806.91. Procurement for Political Subdivisions.

Political subdivisions shall follow procurement rules as required by Texas Human Resources Code §122.017, relating to procurement for political subdivisions.

§806.92. Political Subdivisions Excluded.

Excluded political subdivisions shall follow procurement rules as required by Texas Human Resources Code §122.018, relating to political subdivisions excluded.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605777

Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 218. MOTOR CARRIERS

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 218, Motor Carriers, Subchapter A: §218.2, Definitions; Subchapter B: §218.13, Application for Motor Carrier Registration; Subchapter C: §218.31, Investigations and Inspections of Motor Carrier Records; and §218.32, Motor Carrier Records; Subchapter E: §218.52, Advertising; §218.53, Household Goods Carrier Cargo Liability; §218.56, Proposals and Estimates for Moving Services; §218.59, Inventories; 218.60, Determination of Weights; and §218.61, Claims.

EXPLANATION OF PROPOSED AMENDMENTS

Transportation Code, §643.155, requires the department to appoint a rules advisory committee (advisory committee) consisting of representatives of the public, the department, and motor carriers transporting household goods. The rules advisory committee is required to examine rules adopted by the department under §643.153(a) and (b) and make recommendations to the department on modernizing and streamlining the rules. The advisory committee made recommendations to the department after meeting four times to discuss and examine the rules. The majority of the proposed amendments resulted from the advisory committee's recommendations to the department.

Amendments are proposed to §218.2 to add definitions for the terms "advertisement" and "print advertisement," which are regulated to protect the shippers (consumers). Amendments renumber the remaining terms. Also, an amendment to the existing term "household goods carrier" clarifies that the term applies to all motor carriers that transport household goods for compensation, regardless of the size of the vehicle. Further, the definition for the term "manager" was deleted because the proposed amendments delete this term from Chapter 218.

An amendment is proposed to §218.13 to require an application for registration by a household goods carrier to include a tariff. This proposed amendment helps to protect the consumers by ensuring a tariff is on file before the household goods carrier begins to transport household goods for compensation. The tariff lists the maximum rates the household goods carrier can charge the consumer. According to the Better Business Bureau (BBB) representative on the advisory committee, the second most frequent complaint they receive from consumers regarding household goods carriers is that the price at the end of the move is different than the verbal quote. The BBB representative also stated they will not accredit a household goods carrier until the carrier is registered with the department. If the BBB has not accredited a household goods carrier, a consumer may be less likely to do business with that carrier.

An amendment to §218.13 clarifies that the director's conditional acceptance of an application does not authorize the applicant to operate as a motor carrier. This proposed amendment helps protect consumers from motor carriers that may incorrectly think they can operate as a motor carrier if the director has conditionally accepted an application.

Amendments to §218.31 clarify that employees of the department are certified as department investigators and may conduct investigations and inspect records under Transportation Code, Chapters 643 and 645. Amendments further specify the time, location, and notification requirements for the investigations and inspections. Conforming amendments are proposed throughout Chapter 218 to use the term "department investigator."

Amendments to §218.32 delete unnecessary language regarding household goods carrier's records and clarify that all records must be prepared and maintained in a complete and accurate manner. Also, an amendment clarifies that out-of-state motor carriers may maintain the required records at a business location in Texas, rather than at its principal place of business in Texas.

Amendments to §218.52 modify the requirements for household goods carrier advertisements, including the specific requirements for print advertisements and websites. Amendments also delete outdated language and modify the requirements regarding the identifying markings on household goods carrier's vehicles. The amendments require a household goods carrier that is operating vehicles under a short-term lease to display the name of the carrier and the carrier's certificate of registration number on both sides of the vehicle. The markings help to protect consumers by enabling law enforcement officers and the department's investigators to quickly identify vehicles involved in the transportation of household goods. In addition, the markings help the consumer in identifying the household goods carrier.

Amendments to §218.53 clarify the amount of and the method of calculating a carrier's liability for loss or damage of cargo. According to the BBB representative on the advisory committee, the third most frequent complaint they receive from consumers regarding household goods carriers is that the consumer does not understand how the liability works.

An amendment to §218.56 removes the language that prohibits a motor carrier from including the following in a proposal because this language is inconsistent with current practice: the name, logo, or motor carrier registration number of any other motor carrier. An amendment also clarifies that proposals based on hourly rates are required to state the maximum amount the consumer could be required to pay for the listed transportation and related services. According to one of the household goods carrier representatives on the advisory committee, some household goods carriers believe the current rules do not require a proposal based on hourly rates to state the maximum amount the consumer could be required to pay. According to the BBB representative on the advisory committee, the second most frequent complaint they receive from consumers regarding household goods carriers is the price at the end of the move is different than the verbal quote. This clarification helps to protect consumers by making it clear that any proposal must state the maximum amount the consumer could be required to pay.

Amendments to §218.59 modify the requirements regarding inventories prepared by agreement between the motor carrier and the consumer to give the parties the flexibility they need for each move. Amendments clarify that a consumer's agent may sign an inventory for the consumer at origin and designation.

Amendments to §§218.59, 218.60, and 218.61, respectively, allow the inventory to be prepared in an electronic format, allow

weight tickets to be in an electronic format, and allow a claim and an acknowledgment of a claim to be filed in an electronic format. These amendments expressly allow the consumer and the household goods carrier to benefit from the convenience of modern technology.

Amendments to §218.61 also add clarifying language.

Proposed amendments are made throughout Chapter 218 to revise terminology for consistency with other department rules and with current department practice. Nonsubstantive amendments are proposed to correct grammar throughout the proposed amended sections.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the proposed amendments are in effect, there will be no significant fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

William P. Harbeson, Director of the Enforcement Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of enforcing or administering the amendments will be to: 1) provide more protection for the consumers; 2) modernize the rules; and 3) streamline the rules. There are no anticipated economic costs for persons required to comply with the amendments as proposed, other than the proposed amendments to §218.52.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code, Chapter 2006, the department anticipates a potential adverse economic effect on small businesses and micro-businesses if the proposed amendments to §218.52 are adopted.

There may be anticipated economic costs for persons required to comply with the proposed amendments to §218.52 regarding required language on the household goods carriers' Internet website to the extent the website does not currently list the carrier's name or does not list the required information on the page that is specific to Texas intrastate household goods operations.

There may be anticipated economic costs for persons required to comply with the proposed amendments to §218.52 regarding the identifying markings on household goods carriers' vehicles that are not already governed by Transportation Code, Chapter 642, which requires identifying markings on certain vehicles. Section 218.52 does not currently require the identifying markings on power units operated under a short-term lease. The proposed amendments require the household goods carrier or its agent to include the identifying markings on power units operated under a short-term lease; however, the proposed amendments also delete the requirement to display the identifying markings on trailers. The household goods carriers may utilize different approaches to comply with the proposed requirements, such as using stickers that are available at most hardware stores or a marker and cardboard to create their own identifying markings for the power units operated under a short-term lease. The department's Economic Impact Statement provides the data for household goods carriers that choose the more expensive solution of using a printed magnet that can be removed and reused. However, the household goods carriers can choose a less expensive alternative to comply with these amendments.

The current §218.52 requires the household goods carriers to include their certificate of registration number on both sides of their vehicles. A proposed amendment to §218.52 requires the household goods carriers to include "TxDMV No." prior to their certificate of registration number on both sides of their vehicles. To the extent a household goods carrier does not display its certificate of registration number this way on both sides of their power units, the carrier may incur a cost to comply with the proposed amendment. The household goods carriers may utilize different approaches to comply with the proposed requirement, such as using a marker to write in "TxDMV No." prior to their certificate of registration number or using stickers that are available at most hardware stores. The department's Economic Impact Statement provides the data for household goods carriers that choose the more expensive solution of using a printed magnet that can be added to the current certificate of registration number. However, the household goods carriers can choose a less expensive alternative to comply with these amendments.

Out of the 590 active household goods carriers that are registered with the Texas Workforce Commission, the department determined that 98% (579 of 590) are small businesses. Out of this 98%, 84% (486 of 579) fall within the definition of a micro-business because the carrier has 20 or fewer employees. A review of the North American Industry Classification System on the U.S. Census Bureau website revealed that there are five different types of movers that are included in this classification. The five different types of movers are Furniture Moving, Used; Motor Freight Carrier, Used Household Goods; Trucking Used Household, Office, or Institutional Furniture and Equipment; Used Household and Office Goods Moving; and Van Lines, Moving and Storage Services.

The department performed research to determine the estimated cost for small businesses to comply with the proposed amendments to §218.52 regarding websites. The department concluded that an entity would have to make minor adjustments to its website and absorb the costs of doing so.

If a household goods carrier manages its website in-house, the cost would be minimal for the time spent in updating its website. If a household goods carrier hired an external company to create and maintain the carrier's website, the carrier would not incur a cost if the update is covered by the monthly maintenance fee under its contract. However, if a household goods carrier has to hire someone to update the carrier's website, the carrier might have to pay an hourly rate of $40 for an update that is estimated to take approximately 15 minutes.

The proposed amendments to §218.52 require the household goods carrier or its agent to display certain information on two sides (left and right) of each power unit, including vehicles operated under a short-term lease. The marking must include the carrier's name (or assumed name) and certificate of registration number (styled "TxDMV No. _____"), and meet minimum sizing and readability requirements.

Because a carrier might operate a fleet of vehicles under short-term leases, or otherwise have a high vehicle turnover, the department assumes that the carrier would likely comply with the proposed requirements by attaching magnetic signs to its power units. The department finds that signs sufficient to meet the requirements can be purchased for about $155 for ten signs

($15.50 per sign), which is enough for five power units. Per-sign prices fall as the carrier purchases more signs.

For a carrier that already includes the TxDMV certificate of registration number on its vehicles, but without "TxDMV No." written prior to the number, the carrier may elect to purchase smaller magnetic signs that say "TxDMV No." to place in front of the number already displayed on its vehicles. Ten 3-by-10-inch signs would cost the carrier about $23 ($2.30 per sign), with per-sign prices falling as the carrier purchases more signs.

The department did not find evidence that the proposed amendments to §218.52 would have an adverse economic effect on micro-businesses that is distinct from any potential adverse economic effect on small businesses.

TAKINGS IMPACT ASSESSMENT

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

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas, 78731, or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on December 26, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §218.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

§218.2. Definitions.

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

(1) Advertisement--An oral, written, graphic, or pictorial statement or representation made in the course of soliciting intrastate household goods transportation services, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line service, or on television. The term does not include direct communication between a household goods carrier or carrier's representative and a prospective shipper, and does not include the following:

(A) promotional items of nominal value such as ball caps, tee shirts, and pens;

(B) business cards;

(C) listings not paid for by the household goods carrier or its household goods carrier's agent; and

(D) listings of a household goods carrier's business name or assumed name as it appears on the motor carrier certificate of registration, and the household goods carrier's address, and contact information in a directory or similar publication.

(2) [~~(1)~~] Approved association--A group of household goods carriers, its agents, or both, that has an approved collective ratemaking agreement on file with the department under §218.64 of this title (relating to Rates).

(3) [~~(2)~~] Binding proposal--A formal written offer stating the exact price for the transportation of specified household goods and any related services.

(4) [~~(3)~~] Board--Board of the Texas Department of Motor Vehicles.

(5) [~~(4)~~] Certificate of insurance--A certificate prescribed by and filed with the department in which an insurance carrier or surety company warrants that a motor carrier for whom the certificate is filed has the minimum coverage as required by §218.16 of this title (relating to Insurance Requirements).

(6) [~~(5)~~] Certificate of registration--A certificate issued by the department to a motor carrier and containing a unique number.

(7) [~~(6)~~] Certified scale--Any scale designed for weighing motor vehicles, including trailers or semitrailers not attached to a tractor, and certified by an authorized scale inspection and licensing authority. A certified scale may also be a platform-type or warehouse-type scale properly inspected and certified.

(8) [~~(7)~~] Commercial motor vehicle--

(A) Includes:

(i) any motor vehicle or combination of vehicles with a gross weight, registered weight, or gross weight rating in excess of 26,000 pounds, that is designed or used for the transportation of cargo in furtherance of any commercial enterprise;

(ii) any vehicle, including buses, designed or used to transport more than 15 passengers, including the driver; and

(iii) any vehicle used in the transportation of hazardous materials in a quantity requiring placarding under the regulations issued under the federal Hazardous Materials Transportation Act (49 U.S.C. §§5101-5128).

(B) Does not include:

(i) a farm vehicle with a gross weight, registered weight, and gross weight rating of less than 48,000 pounds;

(ii) cotton vehicles registered under Transportation Code, §504.505;

(iii) a vehicle registered with the Railroad Commission under Natural Resources Code, §113.131 and §116.072;

(iv) a vehicle operated by a governmental entity;

(v) a motor vehicle exempt from registration by the Unified Carrier Registration Act of 2005; and

(vi) a tow truck, as defined by Occupations Code, §2308.002 and permitted under Occupations Code, Chapter 2308, Subchapter C.

(9) [~~(8)~~] Commercial school bus--A motor vehicle owned by a motor carrier that is:

(A) registered under Transportation Code, Chapter 643, Subchapter B;

(B) operated exclusively within the boundaries of a municipality and used to transport preprimary, primary, or secondary school students on a route between the students' residences and a public, private, or parochial school or daycare facility;

(C) operated by a person who holds a driver's license or commercial driver's license of the appropriate class for the operation of a school bus;

(D) complies with Transportation Code, Chapter 548; and

(E) complies with Transportation Code, §521.022.

(10) [~~(9)~~] Conspicuous--Written in a size, color, and contrast so as to be readily noticed and understood.

(11) [~~(10)~~] Conversion--A change in an entity's organization that is implemented with a Certificate of Conversion issued by the Texas Secretary of State under Business and Organizations Code, §10.154.

(12) [~~(11)~~] Department--Texas Department of Motor Vehicles (TxDMV).

(13) [~~(12)~~] Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(14) [~~(13)~~] Division--The Motor Carrier Division.

(15) [~~(14)~~] Estimate--An informal oral calculation of the approximate price of transporting household goods.

(16) [~~(15)~~] Farmer--A person who operates a farm or is directly involved in cultivating land or in raising crops or livestock that are owned by or are under the direct control of that person.

(17) [~~(16)~~] Farm vehicle--Any vehicle or combination of vehicles controlled or operated by a farmer or rancher being used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch.

(18) [~~(17)~~] FMCSA--Federal Motor Carrier Safety Administration.

(19) [~~(18)~~] Foreign commercial motor vehicle--A commercial motor vehicle that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(20) [~~(19)~~] Gross weight rating--The maximum loaded weight of any combination of truck, tractor, and trailer equipment as specified by the manufacturer of the equipment. If the manufacturer's rating is unknown, the gross weight rating is the greater of:

(A) the actual weight of the equipment and its lading; or

(B) the maximum lawful weight of the equipment and its lading.

(21) [~~(20)~~] Household goods--Personal property intended ultimately to be used in a dwelling when the transportation of that property is arranged and paid for by the householder or the householder's representative. The term does not include personal property to be used in a dwelling when the property is transported from a manufacturing, retail, or similar company to a dwelling if the transportation is arranged by a manufacturing, retail, or similar company.

(22) [~~(21)~~] Household goods agent--A motor carrier who transports household goods on behalf of another motor carrier.

(23) [~~(22)~~] Household goods carrier--A motor carrier who transports household goods for compensation or hire in furtherance of a commercial enterprise, regardless of the size of the vehicle.

(24) [~~(23)~~] Insurer--A person, including a surety, authorized in this state to write lines of insurance coverage required by Subchapter B of this chapter.

(25) [~~(24)~~] Inventory--A list of the items in a household goods shipment and the condition of the items.

(26) [~~(25)~~] Leasing business--A person that leases vehicles requiring registration under Subchapter B of this chapter to a motor carrier that must be registered.

~~[(26) Manager--The manager of the department's Motor Carrier Division, Credentialing Section.]~~

(27) Mediation--A non-adversarial form of alternative dispute resolution in which an impartial person, the mediator, facilitates communication between two parties to promote reconciliation, settlement, or understanding.

(28) Motor Carrier or carrier--A person who controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state.

(29) Motor transportation broker--A person who sells, offers for sale, or negotiates for the transportation of cargo by a motor carrier operated by another person or a person who aids and abets another person in selling, offering for sale, or negotiating for the transportation of cargo by a motor carrier operated by another person.

(30) Moving services contract--A contract between a household goods carrier and shipper, such as a bill of lading, receipt, order for service, or work order, that sets out the terms of the services to be provided.

(31) Multiple user--An individual or business who has a contract with a household goods carrier and who used the carrier's services more than 50 times within the preceding 12 months.

(32) Not-to-exceed proposal--A formal written offer stating the maximum price a shipper can be required to pay for the transportation of specified household goods and any related services. The offer may also state the non-binding approximate price. Any offer based on hourly rates must state the maximum number of hours required for the transportation and related services unless there is an acknowledgment from the shipper that the number of hours is not necessary.

(33) Principal place of business--A single location that serves as a motor carrier's headquarters and where it maintains its operational records or can make them available.

(34) Print advertisement--A written, graphic, or pictorial statement or representation made in the course of soliciting intrastate household goods transportation services, including, without limitation, a statement or representation made in or contained in a newspaper, magazine, circular, or other publication. The term does not include direct communication between a household goods carrier or carrier's representative and a prospective shipper, and does not include the following:

(A) promotional items of nominal value such as ball caps, tee shirts, and pens;

(B) business cards;

(C) Internet websites;

(D) listings not paid for by the household goods carrier or its household goods carrier's agent; and

(E) listings of a household goods carrier's business name or assumed name as it appears on the motor carrier certificate of registration, and the household goods carrier's address, and contact information in a directory or similar publication.

(35) [~~(34)~~] Public highway--Any publicly owned and maintained street, road, or highway in this state.

(36) [~~(35)~~] Reasonable dispatch--The performance of transportation, other than transportation provided under guaranteed service dates, during the period of time agreed on by the carrier and the shipper and shown on the shipment documentation. This definition does not affect the availability to the carrier of the defense of force majeure.

(37) [~~(36)~~] Replacement vehicle--A vehicle that takes the place of another vehicle that has been removed from service.

(38) [~~(37)~~] Revocation--The withdrawal of registration and privileges by the department or a registration state.

(39) [~~(38)~~] Shipper--The owner of household goods or the owner's representative.

(40) [~~(39)~~] Short-term lease--A lease of 30 days or less.

(41) [~~(40)~~] SOAH--The State Office of Administrative Hearings.

(42) [~~(41)~~] Substitute vehicle--A vehicle that is leased from a leasing business and that is used as a temporary replacement for a vehicle that has been taken out of service for maintenance, repair, or any other reason causing the temporary unavailability of the permanent vehicle.

(43) [~~(42)~~] Suspension--Temporary removal of privileges granted to a registrant by the department or a registration state.

(44) [~~(43)~~] Unified Carrier Registration System or UCR--A motor vehicle registration system established under 49 U.S.C. §14504a or a successor federal registration program.

(45) [~~(44)~~] USDOT--United States Department of Transportation.

(46) [~~(45)~~] USDOT number--An identification number issued by or under the authority of the FMCSA or its successor.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605790
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §218.13

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

§218.13. Application for Motor Carrier Registration.

(a) Form of application. An application for motor carrier registration must be filed with the department's Motor Carrier Division and must be in the form prescribed by the director and must contain, at a minimum, the following information.

(1) USDOT number. A valid USDOT number.

(2) Business or trade name. The applicant must designate the business or trade name of the motor carrier.

(3) Owner name. If the motor carrier is a sole proprietorship, the owner must indicate the name and social security number of the owner. A partnership must indicate the partners' names, and a corporation must indicate principal officers and titles.

(4) Principal place of business. A motor carrier must disclose the motor carrier's principal business address. If the mailing address is different from the principal business address, the mailing address must also be disclosed.

(5) Legal agent.

(A) A Texas-domiciled motor carrier must provide the name and address of a legal agent for service of process if the agent is different from the motor carrier.

(B) A motor carrier domiciled outside Texas must provide the name and Texas address of the legal agent for service of process.

(C) A legal agent for service of process shall be a Texas resident, a domestic corporation, or a foreign corporation authorized to transact business in Texas with a Texas address for service of process.

(6) Description of vehicles. An application must include a motor carrier equipment report identifying each commercial motor vehicle that requires registration and that the carrier proposes to operate. Each commercial motor vehicle must be identified by its motor vehicle identification number, make, model year, and type of cargo and by the unit number assigned to the commercial motor vehicle by the motor carrier. Any subsequent registration of vehicles must be made under subsection (e) of this section.

(7) Type of motor carrier operations. An applicant must state if the applicant:

(A) proposes to transport passengers, household goods, or hazardous materials; or

(B) is domiciled in a foreign country.

(8) Insurance coverage. An applicant must indicate insurance coverage as required by §218.16 of this title (relating to Insurance Requirements).

(9) Safety affidavit. Each motor carrier must complete, as part of the application, an affidavit stating that the motor carrier knows and will conduct operations in accordance with all federal and state safety regulations.

(10) Drug-testing certification. Each motor carrier must certify, as part of the application, that the motor carrier is in compliance with the drug-testing requirements of 49 C.F.R. Part 382. If the motor carrier belongs to a consortium, as defined by 49 C.F.R. Part 382, the applicant must provide the names of the persons operating the consortium.

(11) Duration of registration.

(A) An applicant must indicate the duration of the desired registration. Registration may be for seven calendar days or for 90 days, one year, or two years. The duration of registration chosen by the applicant will be applied to all vehicles. Household goods carriers may not obtain seven day or 90 day certificates of registration.

(B) Interstate motor carriers that operate in intrastate commerce and meet the requirements under §218.14(c) of this title (relating to Expiration and Renewal of Commercial Motor Vehicles Registration) are not required to renew a certificate of registration issued under this section.

(12) Additional requirements. The following fees and information must be submitted with all applications.

(A) An application must be accompanied by an application fee of:

(i) $100 for annual and biennial registrations;

(ii) $25 for 90 day registrations; or

(iii) $5 for seven day registrations.

(B) An application must be accompanied by a vehicle registration fee of:

(i) $10 for each vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration; or

(ii) $20 for each vehicle that the motor carrier proposes to operate under a biennial registration.

(C) An application must be accompanied by proof of insurance or financial responsibility and insurance filing fee as required by §218.16.

(D) An application for registration by a household goods carrier must include a tariff that sets out the maximum charges for transportation of household goods between two or more municipalities, or a copy of the tariff governing interstate transportation services on a highway between two or more municipalities.

(E) [~~(D)~~] An application must be accompanied by any other information required by law.

(b) Conditional acceptance of application. If an application has been conditionally accepted by the director pursuant to Transportation Code, §643.055, the applicant may not operate the following until the department has issued a certificate under Transportation Code, §643.054:

(1) a commercial motor vehicle or any other motor vehicle to transport household goods for compensation, or

(2) a commercial motor vehicle to transport persons or cargo. [~~The director may conditionally accept an application if it is accompanied by all fees and by proof of insurance or financial responsibility, but is not accompanied by all required information. Conditional acceptance in no way constitutes approval of the application. The director will notify the applicant of any information necessary to complete the application. If the applicant does not supply all necessary information within 45 days from notification by the director, the application will be considered withdrawn and all fees will be retained.~~]

(c) Approved application. An applicant meeting the requirements of this section and whose registration is approved will be issued the following documents:

(1) Certificate of registration. The department will issue a certificate of registration. The certificate of registration will contain the name and address of the motor carrier and a single registration number, regardless of the number of vehicles requiring registration that the carrier operates.

(2) Insurance cab card. The department will issue an insurance cab card listing all vehicles to be operated under the carrier's certificate of registration. The insurance cab card shall be continuously maintained at the registrant's principal place of business. The insurance cab card will be valid for the same period as the motor carrier's certificate of registration and will contain information regarding each vehicle registered by the motor carrier.

(A) A current copy of the page of the insurance cab card on which the vehicle is shown shall be maintained in each vehicle listed, unless the motor carrier chooses to maintain a legible and accurate image of the insurance cab card on a wireless communication device in the vehicle or chooses to display such information on a wireless communication device by accessing the department's online system from the vehicle. The appropriate information concerning that vehicle shall be highlighted if the motor carrier chooses to maintain a hard copy of the insurance cab card or chooses to display an image of the insurance cab card on a wireless communication device in the vehicle. The insurance cab card or the display of such information on a wireless communications device will serve as proof of insurance as long as the motor carrier has continuous insurance or financial responsibility on file with the department.

(B) On demand by a department investigator [~~department-certified inspector~~] or any other authorized government personnel, the driver shall present the highlighted page of the insurance cab card that is maintained in the vehicle or that is displayed on a wireless communication device in the vehicle. If the motor carrier chooses to display the information on a wireless communication device by accessing the department's online system, the driver must locate the vehicle in the department's online system upon request by the department-certified inspector or other authorized government personnel.

(C) The motor carrier shall notify the department in writing if it discontinues use of a registered commercial motor vehicle before the expiration of its insurance cab card.

(D) Any erasure or alteration of an insurance cab card that the department printed out for the motor carrier renders it void.

(E) If an insurance cab card is lost, stolen, destroyed, or mutilated; if it becomes illegible; or if it otherwise needs to be replaced, the department will print out a new insurance cab card at the request of the motor carrier. Motor carriers are authorized to print out a copy of a new insurance cab card using the department's online system.

(F) The department is not responsible for a motor carrier's inability to access the insurance information using the department's online system.

(G) The display of an image of the insurance cab card or the display of insurance information from the department's online system via a wireless communication device by the motor carrier does not constitute effective consent for a law enforcement officer, the department investigator[~~department-certified inspector~~], or any other person to access any other content of the wireless communication device.

(d) Additional and replacement vehicles. A motor carrier required to obtain a certificate of registration under this section shall not operate additional vehicles unless the carrier identifies the vehicles on a form prescribed by the director and pays applicable fees as described in this subsection.

(1) Additional vehicles. To add a vehicle, a motor carrier must pay a fee of $10 for each additional vehicle that the motor carrier proposes to operate under a seven day, 90 day, or annual registration. To add a vehicle during the first year of a biennial registration, a motor carrier must pay a fee of $20 for each vehicle. To add a vehicle during the second year of a biennial registration, a motor carrier must pay a fee of $10 for each vehicle.

(2) Replacement vehicles. No fee is required for a vehicle that is replacing a vehicle for which the fee was previously paid. Before the replacement vehicle is put into operation, the motor carrier shall notify the department, identify the vehicle being taken out of service, and identify the replacement vehicle on a form prescribed by the department. A motor carrier registered under seven day registration may not replace vehicles.

(e) Supplement to original application. A motor carrier required to register under this section shall submit a supplemental application under the following circumstances.

(1) Change of cargo. A registered motor carrier may not begin transporting household goods or hazardous materials unless the carrier submits a supplemental application to the department and shows the department evidence of insurance or financial responsibility in the amounts specified by §218.16.

(2) Change of name. A motor carrier that changes its name shall file a supplemental application for registration no later than the effective date of the change. The motor carrier shall include evidence of insurance or financial responsibility in the new name and in the amounts specified by §218.16. A motor carrier that is a corporation must have its name change approved by the Texas Secretary of State before filing a supplemental application. A motor carrier incorporated outside the state of Texas must complete the name change under the law of its state of incorporation before filing a supplemental application.

(3) Change of address or legal agent for service of process. A motor carrier shall file a supplemental application for any change of address or any change of its legal agent for service of process no later than the effective date of the change. The address most recently filed will be presumed conclusively to be the current address.

(4) Change in principal officers and titles. A motor carrier that is a corporation shall file a supplemental application for any change in the principal officers and titles no later than the effective date of the change.

(5) Conversion of corporate structure. A motor carrier that has successfully completed a corporate conversion involving a change in the name of the corporation shall file a supplemental application for registration and evidence of insurance or financial responsibility reflecting the new company name. The conversion must be approved by the Office of the Secretary of State before the supplemental application is filed.

(6) Change in drug-testing consortium status. A motor carrier that changes consortium status shall file a supplemental application that includes the names of the persons operating the consortium.

(7) Retaining a revoked or suspended certificate of registration number. A motor carrier may retain a prior certificate of registration number by:

(A) filing a supplemental application to re-register instead of filing an original application; and

(B) providing adequate evidence that the carrier has satisfactorily resolved the facts that gave rise to the suspension or revocation.

(f) Change of ownership. A motor carrier must file an original application for registration when there is a corporate merger or a change in the ownership of a sole proprietorship or of a partnership.

(g) Alternative vehicle registration for household goods agents. To avoid multiple registrations of a commercial motor vehicle, a household goods agent's vehicles may be registered under the motor carrier's certificate of registration under this subsection.

(1) The carrier must notify the department on a form approved by the director of its intent to register its agent's vehicles under this subsection.

(2) When a carrier registers vehicles under this subsection, the carrier's certificate will include all vehicles registered under its agent's certificates of registration. The carrier must register under its certificate of registration all vehicles operated on its behalf that do not appear on its agent's certificate of registration.

(3) The department may send the carrier a copy of any notification sent to the agent concerning circumstances that could lead to denial, suspension, or revocation of the agent's certificate.

(h) Substitute vehicles leased from leasing businesses. A registered motor carrier is not required to comply with the provisions of subsection (e) of this section for a substitute vehicle leased from a business registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles). A motor carrier is not required to carry proof of registration as described in subsection (d) of this section if a copy of the lease agreement for the originally leased vehicle is carried in the cab of the temporary replacement vehicle.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605791

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §218.31, §218.32

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

§218.31. Investigations and Inspections of Motor Carrier Records.

(a) Certification of department investigators [~~inspectors~~]. In accordance with Transportation Code, Chapter 643, the executive director or designee will designate department employees as certified [~~inspectors~~] for the purpose of entering the premises of a motor carrier to copy or verify documents the motor carrier is required to maintain according to this chapter [~~by this section to be maintained by the motor carrier~~]. The executive director or designee shall provide credentials to department investigators [~~certified inspectors~~] identifying them as department employees and as certified to conduct investigations and inspect records on behalf of the department [~~inspectors~~].

(b) Investigations and Inspections.

(1) A motor carrier shall grant a department investigator certified under this section [~~inspector~~] access to the carrier's premises to conduct inspections or investigations of alleged violations of this chapter and of Transportation Code, Chapters 643 and 645. The motor carrier shall provide adequate work space with reasonable working conditions and allow the department investigators [~~certified inspector~~] to copy and verify records and documents the motor carrier is required to maintain according to this chapter [~~be maintained by the carrier under §218.32 of this title (relating to Motor Carrier Records)~~].

(2) The department investigator [~~certified inspector~~] may conduct inspections and investigations during normal business hours unless mutual arrangements have been made otherwise.

(3) The department investigator [~~certified inspector~~] will present his or her credentials [~~and a written statement from the department~~] to the motor carrier prior to conducting an investigation or inspection [~~indicating the inspector's authority to inspect and investigate the motor carrier~~].

(c) Access. A motor carrier shall provide access to requested records and documents at:

(1) the motor carrier's principal place of business; or

(2) a location agreed to by the department and the motor carrier.

(d) Designation of meeting time. If the motor carrier's normal business hours do not provide the access necessary for the investigator to conduct the investigation and the parties cannot reach an agreement as to a time to meet to access the records, the department shall designate the time of the meeting and provide written notice via the business address, facsimile number, or email address on file with the department [~~by certified mail or facsimile~~].

§218.32. Motor Carrier Records.

(a) General records to be maintained. Every motor carrier shall prepare and maintain in a complete and accurate manner:

(1) operational logs, insurance certificates, documents to verify the carrier's operations, and proof of registration fee payments;

(2) [~~complete and accurate~~] records of services performed;

(3) all certificate of title documents, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, or any other document that would verify the operations of the vehicle to determine the actual weight, insurance coverage, size, and/or capacity of the vehicle; and

(4) the original certificate of registration and registration listing, if applicable.

[~~(b) Additional records for household goods carriers. In order to verify compliance with Subchapters B and E of this chapter (relating to Motor Carrier Registration and Consumer Protection), every household goods carrier shall retain complete and accurate records maintained in accordance with reasonable accounting procedures of all services performed in intrastate commerce. Household goods carriers shall retain all of the following information and documents:~~]

[~~(1) moving services contracts, such as bills of lading or receipts;~~]

[~~(2) proposals for moving services;~~]

[~~(3) inventories, if applicable;~~]

[~~(4) freight bills;~~]

[~~(5) time cards, trip sheets, or driver's logs;~~]

[~~(6) claim records;~~]

[~~(7) ledgers and journals;~~]

[~~(8) canceled checks;~~]

[~~(9) bank statements and deposit slips;~~]

[~~(10) invoices, vouchers, or statements supporting disbursements; and~~]

[~~(11) dispatch records.~~]

(b) [~~(c)~~] Proof of motor carrier registration.

(1) Except as provided in paragraph (2) of this subsection and in §218.13(c)(2) of this title (relating to Application for Motor Carrier Registration), every motor carrier shall maintain a copy of its current registration listing in the cab of each registered vehicle at all times. A motor carrier shall make available to a department investigator [~~certified inspector~~] or any law enforcement officer a copy of the current registration listing upon request.

(2) A registered motor carrier is not required to carry proof of registration in a vehicle leased from a leasing business that is registered under §218.18 of this title (relating to Short-term Lease and Substitute Vehicles), when leased as a temporary replacement due to maintenance, repair, or other unavailability of the originally leased vehicle. A copy of the lease agreement, or the lease for the originally leased vehicle, in the case of a substitute vehicle, must be carried in the cab of the vehicle.

(3) A motor carrier is not required to carry proof of compliance with UCR or the UCR plan or agreement in its vehicle.

(c) [~~(d)~~] Location of files. Except as provided in this subsection, every motor carrier shall maintain at a principal place of business in Texas all records and information required by the department.

(1) Texas motor carriers [~~firms~~]. If a motor carrier wishes to maintain records at a specific location other than its principal place of business in Texas, the motor carrier shall make a written request to the director [~~manager~~]. A motor carrier may not begin maintaining records at an alternate location until the request is approved by the director [~~manager~~].

(2) Out-of-state motor carriers [~~firms~~]. A motor carrier whose principal business address is located outside the state of Texas shall maintain records required under this section at its [~~principal place of~~] business location in Texas. Alternatively, a motor carrier may maintain such records at a specific out-of-state facility if the carrier reimburses the department for necessary travel expenses and per diem for any inspections or investigations conducted in accordance with §218.31 of this title (relating to Investigations and Inspections of Motor Carrier Records).

(3) Regional office or driver work-reporting location. All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location, whether or not maintained in compliance with paragraphs (1) and (2) of this subsection, shall be made available for inspection upon request at the motor carrier's principal place of business or other location specified by the Department within 48 hours after a request is made. Saturdays, Sundays, and federal and state holidays are excluded from the computation of the 48-hour period of time in accordance with 49 C.F.R. §390.29.

(d) [~~(e)~~] Preservation and destruction of records. All books and records generated by a motor carrier, except driver's time cards and logs, must be maintained for not less than two years at the motor carrier's principal business address. A motor carrier must maintain driver's time cards and logs for not less than six months at the carrier's principal business address.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605792
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER E. CONSUMER PROTECTION

43 TAC §§218.52, 218.53, 218.56, 218.59 - 218.61

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; and more specifically, Transportation Code, §643.153(a), which requires the department to adopt rules to protect a consumer using the service of a motor carrier who is transporting household goods for compensation; and Transportation Code, §643.153(b), which requires the department to adopt rules necessary to ensure that a customer of a motor carrier transporting household goods is protected from deceptive or unfair practices and unreasonably hazardous activities.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 643 and 645.

§218.52. Advertising.

(a) False, misleading, or deceptive advertisements. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.

[~~(a) Print advertising through August 4, 2015. A household goods carrier shall include the following information on print advertisements primarily addressing a local market within this state:~~]

[~~(1) the name of the household goods carrier as shown on the certificate of registration;~~]

[~~(2) the street address of the household goods carrier's or its agent's place of business in this state; and~~]

[~~(3) the household goods carrier's certificate of registration number in the following form, "DMV No. _____".~~]

(b) Print advertisements. [~~Print advertising on or after August 5, 2015.~~] A household goods carrier shall include the following information on all print advertisements primarily addressing a local market within this state:

(1) the full business name or assumed name of the household goods carrier as shown on the certificate of registration;

(2) the street address of the household goods carrier's or its agent's place of business in this state; and

(3) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____".

(c) Use of household goods agent's name. A household goods carrier may include the name of its household goods agent as filed with the department in its print advertisements.

(d) Websites. A household goods carrier shall provide the following information on the home page or, in the case of a national household goods carrier, the page specific to Texas intrastate household goods operations, on any website operated by or for the household goods carrier:

(1) the household goods carrier's name;

(2) department's toll-free consumer help line as listed on the department's website; and

(3) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____".

[~~(d) Items not considered to be print advertisements through August 4, 2015. For the purposes of this section, print advertisement shall not include:~~]

[~~(1) promotional items of nominal value such as ball caps, tee shirts, and pens;~~]

[~~(2) business cards;~~]

[~~(3) internet websites;~~]

[~~(4) listings not paid for by the household goods carrier or its household goods carrier's agent;~~]

[~~(5) nationally placed billboards; and~~]

[~~(6) single-line listings of a carrier name, address, and telephone number in a directory or similar publication.~~]

[~~(e) Items not considered to be print advertisements on or after August 5, 2015. For the purposes of this section, print advertisement shall not include:~~]

[~~(1) promotional items of nominal value such as ball caps, tee shirts, and pens;~~]

[~~(2) business cards;~~]

[~~(3) Internet websites;~~]

[~~(4) listings not paid for by the household goods carrier or its household goods carrier's agent; and~~]

[~~(5) single-line listings of a household goods carrier's name, address, and telephone number in a directory or similar publication.~~]

[~~(f) Internet websites through August 4, 2015. A household goods carrier shall provide the department's toll-free telephone number (1-888-368-4689) and the household goods carrier's certificate of registration number on any website operated by or for the household goods carrier.~~]

[~~(g) Internet websites on or after August 5, 2015. A household goods carrier shall provide the following information on any website operated by or for the household goods carrier:~~]

[~~(1) department's toll-free consumer helpline as listed on the department's website; and~~]

[~~(2) the household goods carrier's certificate of registration number in the following form, "TxDMV No. _____".~~]

(e) [~~(h)~~] Identifying markings on household goods carrier's vehicles.

(1) A household goods carrier or its agent shall display the following information on both sides of [~~either~~] the power unit, including power units operated under a short-term lease [~~or trailer~~]:

(A) the business name or assumed name of the household goods carrier as it appears on the motor carrier certificate of registration; and

(B) the household goods carrier's registration number as it appears on the motor carrier certificate of registration in the following form, "TxDMV No. _____".

(2) The markings required by [~~paragraph (1) of~~] this subsection shall have clearly legible letters and numbers at least two inches in height.

(3) This subsection does not apply to vehicles[~~:~~]

[~~(A)~~] required to comply with Transportation Code, Chapter 642.[~~; or~~]

[~~(B) operated under a short-term lease.~~]

[~~(i) Prohibited advertisements. For the purposes of this subsection, an advertisement is any communication to the public in connection with an offer or sale of an intrastate transportation service. A household goods carrier and its household goods agents may not use any false, misleading, or deceptive advertisements.~~]

§218.53. Household Goods Carrier Cargo Liability.

(a) Unless the carrier and shipper agree in writing to a higher limit of carrier liability, a household goods carrier's liability for loss or damage of property shall be $.60 per pound per article. Claims for loss or damage of property may be settled based on the weight of the article multiplied by $.60.

(b) If the carrier and shipper have agreed in writing to a higher limit of liability, the carrier may charge the shipper for this higher limit of liability. If the agreement between the carrier and shipper to a higher limit of liability provides for a deductible, the carrier's liability to pay for loss or damage of property will be reduced by the amount of the deductible.

[~~A household goods carrier shall be liable for $.60 per pound per article, unless the carrier and shipper agree, in writing, to a higher limit of carrier liability. The household goods carrier shall not be liable for damages in an amount in excess of the agreed to higher limit of liability for the loss, destruction, or damage of the household goods.~~]

§218.56. Proposals and Estimates for Moving Services.

(a) Written proposals. Prior to loading, a household goods carrier shall provide a written proposal, such as a bid or quote, to the shipper. A proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services. This section does not apply if a pre-existing transportation contract sets out the maximum amount the shipper could be required to pay for the transportation services. Pre-existing transportation contracts include, but are not limited to, corporate contracts for the relocation of multiple employees.

(1) A proposal must contain the name and registration number of the household goods carrier as they appear on the motor carrier certificate of registration. If a proposal is prepared by the household goods carrier's agent, it shall include the name of the agent as listed on the carrier's agent filing with the department. A proposal shall also include the street address of the household goods carrier or its agent. [~~A proposal may not include the name, logo, or motor carrier registration number of any other motor carrier.~~]

(2) A proposal must clearly and conspicuously state whether it is a binding or not-to-exceed proposal.

(3) A proposal must completely describe the shipment and all services to be provided. A proposal must state, "This proposal is for listed items and services only. Additional items and services may result in additional costs."

(4) A proposal must specifically state when the shipper will be required to pay the transportation charges, such as if payment must be made before unloading at the final destination. A proposal must also state what form of payment is acceptable, such as a cashier's check.

(5) A proposal must conspicuously state that a household goods carrier's liability for loss or damage to cargo is limited to $.60 per pound per article unless the household goods carrier and shipper agree, in writing, to a higher limit of carrier liability.

(b) Hourly rates. If a proposal is based on an hourly rate, then it is not required to provide the number of hours necessary to perform the transportation and related services. However, if the number

of hours is not included in a proposal, then the carrier must secure a written acknowledgment from the shipper indicating the proposal is complete without the number of hours. Also, the proposal shall state the maximum amount the shipper could be required to pay for the listed transportation and listed related services.

(c) Proposal as addendum. If a proposal is accepted by the shipper and the carrier transports the shipment, then the proposal is considered an addendum to the moving services contract.

(d) Additional items and services. If the household goods carrier determines additional items are to be transported and/or additional services are required to load, transport, or deliver the shipment, then before the carrier transports the additional items or performs the additional services the carrier and shipper must agree, in writing, to:

(1) allow the original proposal to remain in effect;

(2) amend the original proposal or moving services contract; or

(3) substitute a new proposal for the original.

(e) Amendments and storage.

(1) An amendment to an original proposal or moving services contract, as allowed in subsection (d) of this section, must:

(A) be signed and dated by the household goods carrier and shipper; and

(B) clearly and specifically state the amended maximum price for the transportation of the household goods.

(2) If the household goods carrier fails to amend or substitute an original proposal as required by this subsection and subsection (d) of this section, only the charges stated on the original proposal for moving services may be assessed on the moving services contract. The carrier shall not attempt to amend or substitute the proposal to add items or services after the items or services have been provided or performed.

(3) If through no fault of the carrier, the shipment cannot be delivered during the agreed delivery period, then the household goods carrier may place the shipment in storage and assess fees relating to storage according to the terms in §218.58 of this title (relating to Moving Services Contract - Options for Carrier Limitation of Liability), without a written agreement with the shipper to amend or substitute the original proposal.

(f) Combination document. A proposal required by subsection (a) of this section may be combined with other shipping documents, such as the moving services contract, into a single document. If a proposal is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(g) Telephone estimates. A household goods carrier may provide an estimate for the transportation services by telephone. If the household goods carrier provides the estimate by telephone, then the carrier must also furnish a written proposal for the transportation services to the shipper prior to loading the shipment.

§218.59. Inventories.

(a) Applicability. A household goods carrier has the option of preparing an inventory of the shipment.

(b) Inventories prepared by the carrier. A household goods carrier may prepare a complete or partial inventory for its own use without an agreement between the carrier and shipper. The household goods carrier may not charge a fee for preparing an inventory for its own use.

(c) Inventories prepared by agreement between the carrier and shipper. If the household goods carrier and shipper agree to the preparation of an inventory by the carrier, the carrier may assess a fee for this service.

(1) Information contained in the inventory.

(A) The inventory must contain the shipper's name [~~and the household goods carrier's name as it appears on its motor carrier certificate of registration. The inventory may not include the name, logo, or motor carrier registration number of any other motor carrier~~]. The inventory may include the name of the household goods carrier's agent as it is listed on the carrier's agent filing with the department.

(B) The inventory must describe each item in the shipment, unless the parties agree to a partial inventory. The shipper and the carrier may agree regarding the amount of detail that must be included in the inventory.

(C) If any charges are based on the size of the containers, the inventory must list the quantity and size of each container. [~~Additionally, if the household goods carrier assesses handling charges for specific items, such as, pianos, the inventory must show these items separately, if not already shown on the moving services contract.~~]

(D) [~~(C)~~] The inventory must describe and use the symbol "CP" for all containers packed or crated by the carrier. Additionally, the inventory must describe and use the symbol "PBO" for all containers packed or crated by the shipper.

(E) [~~(D)~~] The inventory must include a key for any abbreviation used to describe the condition of the items.

(2) Inventory at origin. The inventory shall be signed by the household goods carrier and the shipper or shipper's agent at origin. The inventory must include a conspicuous statement that the shipper's signature is affirming the contents and condition of the items in the shipment.

(3) Inventory at destination. The carrier and the shipper or shipper's agent shall sign the inventory at destination. A legible copy of the inventory shall be given to the shipper. Signing the inventory does not waive a claimant's right to file a claim. [~~The inventory must include the following statement adjacent to the shipper's signature line, "Signing the inventory means:~~]

[~~(A) all items loaded have been received, except as noted;~~]

[~~(B) obvious loss or damage has been noted; and~~]

[~~(C) signing the inventory does not waive a claimant's right to file a claim."~~]

(4) Combination document. The inventory may be combined with other shipping documents, such as the moving services contract, into a single document. If the inventory is combined with other shipping documents, the purpose of each signature line on the combination document must be clearly indicated. Each signature is independent and shall not be construed as an agreement to all portions and terms of the combination document.

(d) Electronic format. An inventory may be prepared in an electronic format.

§218.60. Determination of Weights.

(a) Shipment weights. A carrier transporting household goods on a not-to-exceed proposal using shipment weight as a factor in determining transportation charges shall determine the weight of each shipment transported prior to the assessment of any charges. Except as provided in this section, the weight shall be obtained on a certified scale.

(b) Weighing procedures.

(1) The weight of each shipment shall be obtained by determining the difference between the:

(A) tare weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded; or

(B) gross weight of the vehicle with the shipment loaded and the tare weight of the same vehicle after the shipment is unloaded.

(2) At the time of both weighings, all pads, dollies, handtrucks, ramps, and other equipment required in the transportation of a shipment shall be on the vehicle. Neither the driver nor any other person shall be on the vehicle at the time of the weighings.

(3) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(4) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to only accommodate and support the entire trailer at one time.

(5) Shipments weighing 1,000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportation or subsequent to unloading.

(6) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment, and the gross weight of the container with the shipment loaded.

(7) The shipper or any other person responsible for the payment of the freight charges shall have the right to observe all weighings of the shipment. The household goods carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under this subchapter.

(c) Weight tickets.

(1) The carrier shall obtain a separate weight ticket for each weighing required under this subsection and the ticket shall be carried on the vehicle. However, if both weighings are performed on the same scale, one weight ticket may be used to record both weighings. Every weight ticket shall be signed by the person performing the weighing. Weight tickets or copies of weight tickets in an electronic format shall be maintained with [~~attached to~~] the carrier's copy of moving services contract covering the shipment. Weight tickets shall contain:

(A) the complete name and location of the scale;

(B) the date of each weighing;

(C) identification of the weight entries as being tare, gross, or net weights;

(D) the company or carrier identification of the vehicle; and

(E) the last name of the shipper as it appears on the moving services contract.

(2) This ticket must be retained by the carrier as part of the records for [~~file on~~] the shipment. A bill presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets in either a printed or electronic format obtained in the determination of the shipment weight.

(d) Reweighing of shipments. Before unloading a shipment weighed at origin and after the shipper is informed of the billing weight and total charges, the shipper may request a reweigh. The charges shall be based on the reweigh weight.

(e) Stored shipments. If a shipment is weighed and placed in storage in transit or delivered out of storage to destination by another vehicle, then no additional weighing shall be required unless the shipment has been decreased or increased in weight subsequent to the original weighing of the shipment.

(f) Constructive weight. Where no certified scale is available at origin, at a point en route, or at destination, a constructive weight, based on seven pounds per cubic foot of properly loaded space may be used to determine the weight of the household goods shipment.

§218.61. Claims.

(a) Filing of claims. A household goods carrier must act on all claims filed by a shipper on shipments of household goods according to this section.

(1) A claim must be filed in writing or by electronic format [~~document transfer~~] with the household goods carrier or the household goods carrier's agent whose name appears on the moving services contract. A claim is considered filed on the date the claim is received by the household goods carrier. A shipper must file a [~~written~~] claim either in writing or by electronic format within 90 days:

(A) of delivery of the shipment to the final destination; or

(B) after a reasonable time for delivery has elapsed in the case of failure to make delivery.

(2) The claim must include enough facts to identify the shipment. The claim must also describe the type of claim and request a specific type of remedy.

(3) Shipping documents may be used as evidence to support a claim, but cannot be substituted for a written claim.

(4) A claim submitted by someone other than the owner of the household goods must be accompanied by a written explanation of the claimant's interest in the claim.

(b) Acknowledgment and disposition of filed claims.

(1) A household goods carrier shall send an [~~a written~~] acknowledgment of the claim either in writing or by electronic format to the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim by the carrier or his agent.

(A) The claim acknowledgment shall include the statement, "Household goods carriers have 90 days from receipt of a claim to pay, decline to pay, or make a firm settlement offer, in writing, to a claimant. Questions or complaints concerning the household goods carrier's claims handling should be directed to the Texas Department of Motor Vehicles (TxDMV), [~~department's~~] Enforcement Division, via the toll-free consumer helpline as listed on the department's website. Additionally, a claimant has the right to request mediation from TxDMV within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(B) The household goods carrier is not required to issue the acknowledgment letter prescribed in this subsection if the claim has been resolved or the household goods carrier has initiated communication regarding the claim with the claimant within 20 days (excluding Sundays and nationally recognized holidays) after receipt of the claim. However, the burden of proof of the claim resolution or communication with the claimant is the responsibility of the household goods carrier.

(2) After a thorough investigation of the facts, the household goods carrier shall pay, decline to pay, or make a firm settlement offer in writing to the claimant within 90 days after receipt of the claim by the household goods carrier or its household goods agent. The settlement offer or denial shall state, "A claimant has the right to seek mediation through the Texas Department of Motor Vehicles (TxDMV) [~~TxDMV~~] within 30 days (excluding Sundays and nationally recognized holidays) after any portion of the claim is denied by the carrier, the carrier makes a firm settlement offer that is not acceptable to the claimant, or 90 days has elapsed since the carrier received the claim and the claim has not been resolved."

(3) A household goods carrier must provide a copy of the shipping documents to the shipper's insurance company upon request. The carrier may assess a reasonable fee for this service.

(c) Documenting loss or damage to household goods.

(1) Inspection. If a loss or damage claim is filed and the household goods carrier wishes to inspect the items, the carrier must complete any inspection as soon as possible, but no later than 30 calendar days, after receipt of the claim.

(2) Payment of shipping charges. Payment of shipping charges and payment of claims shall be handled separately, and one shall not be used to offset the other unless otherwise agreed upon by both the household goods carrier and claimant.

(d) Claim records. A household goods carrier shall maintain a record of every claim filed. Claim records shall be retained for two years as required by §218.32 of this title (relating to Motor Carrier Records). At a minimum, the following information on each claim shall be maintained in a systematic, orderly and easily retrievable manner:

(1) claim number (if assigned), date received, and amount of money or the requested remedy;

(2) number (if assigned) and date of the moving services contract;

(3) name of the claimant;

(4) date the carrier issued its claim acknowledgment letter;

(5) date and total amount paid on the claim or date and reasons for disallowing the claim; and

(6) dates, time, and results of any mediation coordinated by the department.

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605793
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 25, 2016
For further information, please call: (512) 465-5665

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.14

The Commission on State Emergency Communications withdraws the proposed amended §251.14 which appeared in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3384).

Filed with the Office of the Secretary of State on November 10, 2016.

TRD-201605780
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: November 10, 2016
For further information, please call: (512) 305-6915

♦ ♦ ♦

Jacquelynn Gonzalez
4th Grade

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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE--STANDARDS

1 TAC §251.15

The Commission on State Emergency Communications (CSEC) adopts new §251.15, concerning the minimum requirements for Emergency Services Gateway Operators (ESGWs) providing or facilitating the providing of 9-1-1 service using a dynamic Automatic Location Identification (ALI) solution. The new section is adopted with changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3386). CSEC has determined that the adopted changes to the proposed text do not (1) change the nature or scope of the rule so much that it could be deemed a different rule; (2) affect individuals who would not have been impacted by the rule as proposed; or (3) impose more stringent requirements for compliance.

REASONED JUSTIFICATION

New section 251.15 is justified in order to establish minimum requirements for ESGWs providing or facilitating the providing of 9-1-1 service to interconnected Voice over Internet Protocol (VoIP) or wireless end-users directly through the end-user's VoIP service provider (VSP) or commercial mobile radio service (CMRS) provider, respectively, or indirectly through another ESGW, a VoIP Positioning Center (VPC), or a Mobile Positioning Center (MPC). The minimum requirements are intended to ensure notice to 9-1-1 Entities, and parity and consistency in the providing of ESGW services.

In 2005 the Federal Communications Commission (FCC) adopted regulations requiring interconnected voice over Internet Protocol (VoIP) service providers (VSPs) to provide enhanced 9-1-1 service to their customers. In 2008, Congress passed the *New and Emerging Technologies 911 Improvement Act of 2008* (NET 911 Act), which provides in part:

It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time. (Codified at 47 U.S.C. §615a-1.)

VSPs offer a critical intermediary service not only to VSPs but also to other specified communications service provider (CSPs) who utilize a dynamic Automatic Location Information (ALI) solution-including commercial mobile radio service (CMRS) providers. An ESGW is neither a VSP nor a CMRS provider, and they are currently not required to register or be certificated by the FCC, the Texas Public Utility Commission (PUC), CSEC, or a 9-1-1 Entity. An ESGW's ability to provide service is predicated on the cooperation of Texas' 9-1-1 Entities (Regional Planning Commissions (RPCs) and Emergency Communication Districts (ECDs)), particularly in providing access to the selective routers that are part of the 9-1-1 Entities' networks.

Non-Substantive Changes to the Published Text: In response to submitted comments, discussed below, CSEC has made non-substantive changes to the section as published. These changes were made in cooperation with West Safety Services, Inc. (West) and the Texas 9-1-1 Alliance. CSEC adopts new section 251.15 with the following changes to the published text:

Subsection (a): Added to the first sentence "and routed." Added a third sentence that reads, "This rule is structured to encourage ESGW Operators and their customers to cooperate with each other in good faith to ensure ESGW Operators are able to comply with their obligations stated herein." The third sentence is added in recognition that ESGW customer cooperation helps ensure compliance with the section's requirements;

Subsection (b): To the first sentence text is added and deleted to better specify the services provided by an ESGW, and in recognition that an ESGW may rely upon another ESGW in order to provide services throughout the state of Texas;

Subsection (g): Added "changes to ESGW Operator," deleted "new services or of changes to existing," and also added "by the ESGW Operator." These changes better specify the circumstances under which an ESGW Operator must provide notice to a 9-1-1 Entity;

Subsection (h): Added two additional sentences at the end to (1) clarify the information an ESGW must provide upon request from CSEC or a 9-1-1 Entity; and (2) make the providing of records under the subsection required and therefore subject to the confidentiality provision of Health and Safety Code §771.061.

Comments: CSEC received comments from West. As a result thereof, CSEC worked with West on the preceding changes to the published text of the rule. Notwithstanding agreement on the new section, West remains opposed to the adoption of the section.

Consistent with its comments in opposition to CSEC's adoption of the *VoIP Positioning Center Operator Minimum Requirements* section (1 Texas Administrative Code Part 12, §251.14), West commented that the section is an unnecessary regulation of ESGW Operators that CSEC is preempted from adopting and from which no public benefit will be derived. These arguments are essentially the same as those considered and rejected by the Commission in adopting Section 251.14 in 2013.

In support of its lack of jurisdiction/authority argument West cites 47 U.S.C. §615a-1(d); the Federal Communications Commission's (FCC) *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission,* Memorandum Opinion and Order, 19 FCC Red 22404 (2004) *(Vonage Order);* Texas Health and Safety Code §§771.051 and .0512; and Texas Public Utility Regulatory Act (PURA) §52.002(d). In particular, that Section 52.002(d) explicitly forbids CSEC from promulgating rules that "directly or indirectly regulate rates charged for, service or contract terms for, conditions for, or requirements for entry into the market for Voice over Internet Protocol services or other Internet Protocol enabled services."

In its no public benefit comment West asserts that the function of the ESGW is to simply ensure that "9-1-1 calls are steered to the correct transmission facility serving the selective router assigned to a particular 9-1-1 Entity." In essence, West argues that because it relies upon and uses the routing information provided in the received call setup signaling to select the appropriate trunk group and signal call setup toward the appropriate selective router that "regulating" an ESGW provides no public benefit; and therefore CSEC should continue utilizing model ESGW agreements to address the providing of ESGW services.

CSEC Response:

CSEC disagrees with the comments that CSEC is preempted and precluded by federal and state law from adopting the new section. The NET 911 Act requires service provider parity for VSPs equivalent to that afforded local exchange companies. Section 615a-1(a) of the NET 911 Act imposes a duty on VSPs to provide 9-1-1 service and enhanced 9-1-1 service. Enhanced 9-1-1 service is defined in the NET 911 Act as "the delivery of 9-1-1 calls with automatic number identification and automatic location identification, or successor or equivalent information features over the wireline E911 network . . . and equivalent or successor networks and technologies." Additionally, subsection 615a-1(b) obligates the 9-1-1 Entities to provide VSPs access to the facilities that the 9-1-1 Entities own or control that are utilized in the providing of 9-1-1 service.

West's citing to 47 U.S.C. §615a-1(d) as preempting adoption is misplaced. The portion of the section West apparently relies upon is: "The FCC may delegate authority to enforce the regulations issued under subsection (c) to State commissions or other State or local agencies or programs with jurisdiction over emergency communications." The apparent inference being that the FCC has not made such a delegation. The remainder of section 615a-1(d) provides, however, that:

Nothing in this section is intended to alter the authority of State commissions or other State or local agencies with jurisdiction over emergency communications, provided that the exercise of such authority is not inconsistent with Federal law or Commission requirements.

The obligation to provide VSP parity in 615a-1(b) is extended by the new section to ESGW Operators as the intermediary, third-party agents responsible for 9-1-1 call delivery and routing for specified VSPs and other specified CSPs that utilize a dynamic ALI solution. Minimum requirements are necessary in order to provide such non-discriminatory and competitively neutral access and parity to 9-1-1 Entity facilities. Section 251.15 imposes minimum requirements on the agents of VSPs and other specified CSPs to provide a standard level of service to all CSP end-users. Section 251.15, and the minimum requirements therein, help to provide for 9-1-1 service and service provider parity and is consistent with federal law and regulations. Accordingly, CSEC is not pre-empted from adopting the new section.

Regarding the comments about state law, the Texas Legislature's adding of PURA §52.002(d) includes the following statement of legislative intent:

Nothing in 52.002(d) limits or impairs the authority of any department, agency, or political subdivision to administer or enforce any statutory obligation or fee with regard to the regulation or provisioning of E-9-1-1 services or next generation E-9-1-1 services.

Section 251.15 gives effect to the stated legislative intent and is critical to providing a standard level of enhanced 9-1-1 service by ESGWs. The providing of 9-1-1 service is migrating inexorably to an exclusive Internet Protocol (IP)-based environment. The promises of Next Generation 9-1-1 Service, including text-to-911, cannot be achieved without clear minimum requirements governing service delivery. Rather than precluding adoption of the new section, PURA supports CSEC's authority regarding 9-1-1 service - particularly its responsibility in a rapidly changing technological environment to administer the implementation of statewide 9-1-1 service (Tex. Health & Safety Code §771.051(a)(1)).

In response to West's regulatory and no public benefit comments, the documenting of specific expectations has long been an important part of providing 9-1-1 service. Adopting minimum requirements directed at heretofore non-existent third-parties helps to ensure that 9-1-1 Entities are informed of who is providing such intermediary services and how such services are implemented. The primary goal being to ensure reliable and consistent provisioning of 9-1-1 service. Additionally, a set of minimum requirements ensures a level playing field amongst competing providers, and helps ensure that an ESGW is responsive to the reasonable inquiries of 9-1-1 Entities.

Moreover, rather than regulating ESGWs, a review of the ESGW rule makes clear that its primary function is to ensure notice and cooperation because the rule requires only that an ESGW:

(1) Register with the Commission;

(2) Notify 9-1-1 Entities in whose areas they provide service, as well as when they make changes that may materially impact 9-1-1 service;

(3) Submit a service plan describing how services are provided;

(4) Use reasonable diligence to ensure the proper provisioning of service;

(5) Respond to specific written requests; and

(6) Annually certify as to the accuracy of its registration and service plan.

The minimum requirements are neither regulatory nor burdensome-not that the Commission is precluded from adopting a rule regulating the provisioning of 9-1-1 service and the utilization of the facilities owned or controlled by 9-1-1 Entities in order to ensure reliable and consistent 9-1-1 service.

EFFECTIVE DATE

In cooperation with West, and in order to allow ESGW Operators time to comply, CSEC has determined that the effective date of the new section is May 1, 2017. As of the effective date,

any agreements between an ESGW Operator and CSEC or a Regional Planning Commission are void and of no further effect.

STATEMENT OF AUTHORITY

The new section is adopted pursuant to Health and Safety Code §§771.051, 771.055; 47 U.S.C. §§615a-1 and 615b; 47 C.F.R. §§9.1 - 9.7; H.J. of Tex., 82nd Leg., R.S. 2817 (2011).

No other statute, article, or code is affected by the adoption.

§251.15. Emergency Services Gateway Operator Minimum Requirements.

(a) Purpose. The purpose of this rule is to establish minimum requirements for Emergency Services Gateway (ESGW) Operators providing or facilitating the providing of 9-1-1 service using a dynamic Automatic Location Identification (ALI) solution. This rule is intended to ensure end-users whose 9-1-1 calls are delivered and routed through an ESGW are provided with a consistent level of 9-1-1 service. This rule is structured to encourage ESGW Operators and their customers to cooperate with each other in good faith to ensure ESGW Operators are able to comply with their obligations stated herein.

(b) Applicability. This rule is applicable to ESGW Operators, which for purposes of this rule, includes entities that provide or facilitate the provisioning of 9-1-1 call delivery and routing services to interconnected Voice over Internet Protocol (VoIP) or wireless end-users directly through the end-user's VoIP service provider (VSP) or commercial mobile radio service (CMRS) provider, respectively, or indirectly through another ESGW, a VoIP Positioning Center (VPC), or a Mobile Positioning Center (MPC). An ESGW Operator does not include an entity operating under a certificate required by Texas Utilities Code §54.001, acting solely to provide local exchange telephone service, basic local telecommunications service, or switched access service; or a VSP that self-provisions 9-1-1 service for its own end-users. This rule provides the minimum standards for an ESGW Operator to implement 9-1-1 service requirements.

(c) Registration. An ESGW Operator shall register with the Commission and provide written notice to each 9-1-1 Entity (*i.e.,* an Emergency Communication District or Regional Planning Commission as defined in Texas Health and Safety Code §771.001) in whose region or territory they provide ESGW service. A current registration is a prerequisite to interfacing with a 9-1-1 Entity's Network, and for obtaining 9-1-1 Entity authorization to order dedicated 9-1-1 trunks (16 Tex. Admin. Code §26.5(64)). Registration shall be made on a form provided by Commission staff and include:

(1) ESGW Operator name (including d/b/a), address, website, and contact information including email;

(2) Contact information of the ESGW E9-1-1 Coordination Manager and ESGW 24X7 Operations.

(3) Name and contact information of VPC Operators utilizing ESGW Operator's services

(4) Services provided;

(5) Name of each 9-1-1 Entity in whose region or territory the ESGW Operator provides services;

(6) Name and contact information of its ESGW customers; and

(7) Whether the ESGW Operator collects or remits 9-1-1 service fees on behalf of any of its ESGW customers' end-users.

(d) Authorization to Interface with 9-1-1 Entity's Network. A 9-1-1 Entity will upon request provide an ESGW Operator registered under subsection (c) with a Certificate of Authorization (COA) authorizing the ESGW Operator to interface with the 9-1-1 Entity's Network. A COA serves as authorization to the 9-1-1 Entity's 9-1-1 Network Services Provider that the ESGW Operator is authorized to provide ESGW services within the 9-1-1 Entity's service area.

(e) Service Plan. An ESGW Operator shall submit to the Commission a service plan that for each selective router includes 911 Trunk Circuit ID 2+6 Code(s), number of Trunks in Trunk Group, CLLI code, 9-1-1 Entity Authorizing Trunk Group and the date the COA was received. The service plan shall be submitted on a form provided by Commission staff.

(f) Annual Certification. An ESGW Operator shall annually, and upon written request by the Commission or a 9-1-1 Entity, update and certify the accuracy of its Registration and Service Plan. An ESGW Operator shall submit an amended Registration and/or Service Plan at the time of its Annual Certification if changes have been made to the Registration and/or Service Plan.

(g) Implementation, Testing and Maintenance Procedures. An ESGW Operator shall use reasonable diligence to implement, test, and maintain its ability to provide ESGW services consistent with recognized industry standards, best practices, and applicable law. An ESGW Operator shall notify the Commission and each potentially affected 9-1-1 Entity in writing of any changes to ESGW Operator services or arrangements that may materially impact the provisioning of 9-1-1 service by the ESGW Operator.

(h) Compliance and the Provisioning of 9-1-1 Service. Upon written request from the Commission or a 9-1-1 Entity in whose region or territory an ESGW Operator provides service, an ESGW Operator shall coordinate with the Commission or requesting 9-1-1 Entity to ensure compliance with this rule and the proper provisioning of 9-1-1 service. Upon receipt of a written request, an ESGW Operator will provide reasonable access to and/or copies of the ESGW Operator's basic network information and/or provisioning related records or a detailed explanation why the requested information cannot reasonably be made available. This subsection does not require an ESGW Operator to disclose confidential VSP customer information without customer consent. Records and information submitted in response to a written request under this subsection are required and shall be kept confidential in accordance with Health and Safety Code §771.061.

(i) Reimbursement for Direct Dedicated 9-1-1 Trunking. The reimbursable costs for direct dedicated 9-1-1 trunks are set by the Public Utility Commission (16 Tex. Admin. Code §26.435(c)). Cost reimbursement is provided to the extent permitted by law and only within the 9-1-1 Entity's then available appropriations and budget. An ESGW Operator seeking direct dedicated 9-1-1 trunking reimbursement shall request reimbursement directly from the appropriate 9-1-1 Entity.

(j) Liability Protection. ESGW Operator in compliance with this rule is deemed a "third party or other entity involved in the providing of 9-1-1 service" as that term is used to limit liability in Texas Health and Safety Code §771.053.

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

Filed with the Office of the Secretary of State on November 10, 2016.

TRD-201605783

Patrick Tyler
General Counsel
Commission on State Emergency Communications
Effective date: May 1, 2017
Proposal publication date: May 13, 2016
For further information, please call: (512) 305-6915

♦ ♦ ♦

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

SUBCHAPTER C. FINANCIAL REQUIREMENTS

DIVISION 6. BUDGETING FOR ELIGIBILITY AND CO-PAYMENT

1 TAC §358.431

The Texas Health and Human Services Commission (HHSC) adopts amendments to §358.431, concerning Definitions, without changes to the proposed text as published in the August 5, 2016, issue of the *Texas Register* (41 TexReg 5645) and will not be republished.

BACKGROUND AND JUSTIFICATION

HHSC adopts the amendments to align the terminology and requirements of Medicaid for the Elderly and People with Disabilities (MEPD) with federal laws and current HHSC policy and processes.

The amendments implement the legal recognition of same sex marriage consistent with the United States Supreme Court decision *Obergefell v. Hodges,* 576 U.S. 135 (2015)). The decision in this case, issued on June 26, 2015, requires states to recognize a marriage between two people of the same sex to the same extent it would recognize a marriage between two people of opposite sex. Furthermore, states must also recognize a marriage between two people of the same sex when the marriage was lawfully performed in another state to the same extent the state would recognize the marriage between two people of opposite sex.

COMMENTS

The 30-day comment period ended September 4, 2016. During this period, HHSC did not receive any comments regarding the amended rule.

The amendment is adopted 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. No other statutes, articles, or codes are affected by this proposal.

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

Filed with the Office of the Secretary of State on November 9, 2016.

TRD-201605778
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 29, 2016
Proposal publication date: August 5, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.3

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Administration, §1.3. Delinquent Audits and Related Issues. The rule is adopted for repeal in connection with the adoption of new §1.3, concerning Delinquent Audits and Related Issues, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6854).

REASONED JUSTIFICATION: The purpose of the repeal is to effectuate a reorganization of the rules in which the topic covered under this section will now be addressed in a new and separately adopted section of Chapter 1; this repeal will therefore remove redundancy and avoid confusion.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this proposed repeal.

The Board approved the adoption of this repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute; however, the provisions of this rule will now be addressed in a new and separately adopted Subchapter D in Chapter 1.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605808

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Administration, §1.21, Action by Department if Outstanding Balance Exists. The rule is adopted for repeal in connection with the adoption of new §1.21, concerning Action by Department if Outstanding Balance Exists, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6855).

REASONED JUSTIFICATION: The purpose of the repeal is to remove this section and, under separate action, adopt this section as new to effectuate a redrafting of this rule that more clearly reflects that the rule is not only applicable to multifamily activities, that disallowed costs are considered to be outstanding balances, to indicate the opportunity for a repayment plan, and other associated changes.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this proposed repeal.

The Board approved the adoption of this repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605813
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Administration, §1.21, Action by Department if Outstanding Balance Exists, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6855). The rule text will not be republished.

REASONED JUSTIFICATION: The purpose of the new section is to effectuate a redrafting of this rule that more clearly reflects that the rule is not only applicable to multifamily activities, that disallowed costs are considered to be outstanding balances, to indicate the opportunity for a repayment plan, and to make other associated changes.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this new rule.

The Board approved the adoption of this new rule on November 10, 2016.

STATUTORY AUTHORITY. This rule is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rule affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605814
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER C. PREVIOUS PARTICIPATION

10 TAC §1.302

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Administration, §1.302, Previous Participation Reviews for CSBG, LIHEAP, and WAP. The rule is adopted for repeal in connection with the adoption of new §1.302, concerning Previous Participation Reviews for CSBG, LIHEAP, and WAP, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6856).

REASONED JUSTIFICATION: The purpose of the repeal is to remove this section and, under separate action, adopt this section as new to effectuate a redrafting and consolidation of this rule that will more clearly provide for guidance on the previous participation process for non-multifamily applicants.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this proposed repeal.

The Board approved the adoption of this repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605815
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

10 TAC §1.302

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Administration, §1.302, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 of this Subchapter, without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6857). The rule text will not be republished.

REASONED JUSTIFICATION: The purpose of the new section is to effectuate a redrafting of this rule, consolidate what had previously been covered by both §1.302 and §1.303 of this Subchapter and more clearly provide for guidance on the previous participation process for non-multifamily applicants.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this new rule.

The Board approved the adoption of this new rule on November 10, 2016.

STATUTORY AUTHORITY. This rule is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rule affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605816
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

10 TAC §1.303

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Administration, §1.303, Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter. The rule is adopted for repeal in connection with the adoption of new §1.303, concerning Previous Participation Reviews for Department Program Awards Not Covered by §1.301 or §1.302 of This Subchapter, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6858).

RESONED JUSTIFICATION: The purpose of the repeal is to remove this section and, under separate action, adopt this section as new to effectuate a redrafting and consolidation of this rule that will more clearly provide for guidance on the previous participation process for non-multifamily applicants.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this proposed repeal.

The Board approved the adoption of this repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605817
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER D. UNIFORM GUIDANCE FOR RECIPIENTS OF FEDERAL AND STATE FUNDS

10 TAC §§1.401 - 1.409

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 1, Administration, Subchapter D, Uniform Guidance for Recipients of Federal and State Funds. This new subchapter is being adopted with changes made in response to public comment to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6859).

REASONED JUSTIFICATION: The purpose of the new section is to establish more clearly for program participants in one central rule location the federal and state guidance applicable to Department subrecipients and administrators and includes such types of issues as Cost Principles, Travel, Single Audit Requirements, Purchase and Procurement, Inventory Reports, Bonding, and Record Retention.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. Comments and re-

sponses are presented in the order they appear in the rule with comments received from Raimond Gideon, Habitat for Humanity of Smith County (#1); Dan Boyd, Community Services of Northeast Texas (#2); Joanna Guillen, El Paso Collaborative for Community and Economic Development (#3); and Miguel Chacon, AYUDA, Inc. (#4). Some "comment" received posed questions not related to the wording of the rule or asked for further training, but did not provide specific suggested revisions to the rule. In those cases, only items that were specific comments on the rule are summarized below; training will be available after rule adoption if needed.

1. General Comment

COMMENT SUMMARY: Comment was made that the Uniform Grant Management Standards ("UGMS") were not intended to apply to non-profits (#1). It was also commented that adhering to these requirements would require additional staff time and expense to perform the requirements (#1). It was commented that the preamble provided by the Department in the *Texas Register* noted no cost to the rule, but that there is concern that some of the requirements would in fact have some cost. (#3, 4)

STAFF RESPONSE: This rule, as drafted, makes UGMS applicable for private nonprofits receiving state or federal funds for which 2 CFR 200, or UGMS, are not currently applicable. Historically, through the release of Notices of Funding Availability ("NOFAs"), a variety of the requirements of UGMS have been made applicable to contract awardees, and so the costs may have existed and were in some cases intended to apply to nonprofit subrecipients. In response to feedback from KPMG (received during the Department's federally-required Single Audit) to be more clear on the applicability of cost principles to state funds, this revision was proposed in rule for transparency and clarity. It should be noted that the commenter provided no alternative set of standards, and having no standards is considered a risk. Regarding the comment that the requirements may add cost, the policies as a whole do not necessarily add costs, but some specific sections may, depending on the specific program, have a cost. It is emphasized that any costs added are eligible costs under the grant and pose no new costs that would have to be borne by funds other than the state or federal assistance. Issues of cost have been addressed in individual sections below, when applicable. It should be noted that because these requirements were often made applicable through the NOFA process, perceived added costs may have been applicable in any case.

2. §1.402, Cost Principles and Administrative Requirements

COMMENT SUMMARY: One commenter questioned under which circumstances HOME contracts would have to adhere to UGMS (#4). Two commenters noted that for smaller nonprofits, the language regarding separation of duties, and ensuring that no individual has the ability to perform more than one of the functions listed, is problematic, particularly for organizations without at least 5 employees (#3, 4).

STAFF RESPONSE: As it relates to the comment regarding uncertainty of when HOME subrecipients might have to adhere to UGMS, the rule specifies as currently drafted that Private nonprofit subrecipients of HOME do not have to comply with UGMS "unless otherwise required by Notice of Funding Availability ("NOFA") or Contract" and further notes that: "For federal funds, Subrecipients will also follow 2 CFR Part 200, as interpreted by the federal funding agency." The Department does not believe any edits are needed in relation to that comment. As it relates to the separation of functions, the Department appreciates the challenge posed by this requirement for small nonprofits that may not have enough employees to ensure the separation of duties. An additional subsection has been added noting how such small entities could still satisfy this requirement:

(c) For Subrecipients with fewer than five paid employees, demonstration of sufficient controls to similarly satisfy the separation of duties required by subsection (b) of this section, must be provided at the time that funds are applied for.

3. §1.403, Single Audit Requirements

COMMENT SUMMARY: The commenter suggests in association with section (b)(1) that Subrecipients be permitted to have a qualification preference of "a familiarity with TDHCA/Subrecipient relationships" when selecting a single auditor. The commenter noted that this was not suggested to generate a rule change, per se, but that such a preference be considered permissible when compliance with the rule is determined (#2). The commenter also suggested for section (b)(2) to revise "a sealed bid method" to "the sealed bid method" to more clearly reference back to the specific method cited in the rule (#2). Another commenter noted that the following sentence in §1.403(e) is confusing: "Subrecipients that expend $750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted." (#3). Another commenter noted that the possible requirement to advertise for the single auditor outside the entity's service area could add cost to the advertising of the service (#4).

STAFF RESPONSE: As it relates to the qualification preference, such a preference is not permitted if it is overly restrictive to competition. The determination of being overly restrictive is dependent on a specific fact situation. No rule change is being made. Staff concurs with the clarifying edit relating to "the" sealed bid as noted below. Staff concurs with the comment relating to confusion on when an audit is triggered in (e) and makes clarifying edits below. As it relates to the advertising outside of a service area possibly adding cost, it should be noted that the rule only indicates that "Proposals should be advertised broadly, which may include going outside the entity's service area, and solicited from an adequate number (usually two or more) of qualified sources." For a service area the size of the El Paso metropolitan area, the community of the commenter, it is likely that it is sufficiently large to generate two or more respondents, so no additional advertising outside the area would be needed.

(b)(2) Subrecipients may not use the sealed bid method for procurement of the Single Auditor.

(e) Subrecipients that expend $750,000 or more in federal and/or state awards or have an outstanding loan balance associated with a federal or state resource of $750,000 or more with continuing compliance requirements, or a combination thereof must have a Single Audit or program-specific audit conducted.

4. §1.404, Purchase and Procurement Standards

COMMENT SUMMARY: One commenter noted that while they use historically underutilized businesses, it would require additional staff time and expense to comply with the proposed documentation requirements associated with Historically Underutilized Business ("HUB") Procurement required under section (d) (#1). Another commenter echoed that the procurement items associated in the rule with UGMS would likely result in additional costs to nonprofit administrators (#3). Two commenters

indicated that section (b) which requires that subrecipients require subcontractors to establish written procurement procedures, would be challenging because it is difficult enough to find "good" contractors willing to work in rural and colonia areas and will likely result in an undue burden on subrecipients to find contractors that can understand, let alone meet this requirement (#3, 4).

STAFF RESPONSE: As it relates to the comment that complying with HUB documentation would be costly, the Uniform Grant Management Standards references the State of Texas Procurement Manual located at https://www.comptroller.texas.gov/purchasing/publications/procurement-manual.php. The manual provides procurement guidelines that include HUB compliance and should assist with associated cost efficiencies. It should be noted that the costs associated with the procurement are eligible costs under the grant. As it relates to the comment about requiring subcontractors to have written procurement procedures, this is an issue of how the terms of 'subcontractor' and/or 'vendor' are used in UGMS and 2 CFR 200 versus how Subcontractor is used in the weatherization program. In general, construction contractors in housing programs would not be required to have such written procurement procedures because their role is that of a vendor. The requirement does not apply to 'vendors' but only to true subcontractors or other entities who administer some part of the Subrecipient's program on their behalf. Clarification to the rule is being made to include the word subrecipients, which is the term some programs (e.g. ESG and HOME) use. This is also an issue on which further training can be provided if needed.

(b) Subrecipients shall establish, and require (its subrecipients/)Subcontractors (as applicable by program regulations) to establish, written procurement procedures that when followed, result in procurements that comply with federal, state and local standards, and grant award contracts.

5. §1.405, Bonding Requirements

COMMENT SUMMARY: One commenter, a recipient of Housing Trust Fund program funds, noted that the "requirement of builders risk" would add an unnecessary expense with no added benefit; in the commenters extensive years of construction experience, they have found that most insurance companies do not provide such coverage for remodels (#1). Two other commenters, administrators of HOME funds, similarly noted that the bonding requirements would likely add additional costs to nonprofit administrators, and it was noted that this cost could negatively affect those assisted with Contract for Deed funds because of those costs possibly then limiting the soft costs for the nonprofit (#3, 4). There was concern noted that the applicability of this requirement could negatively affect subcontractors that are Section 3 businesses (#4).

STAFF RESPONSE: This section of the rule as proposed only is applicable to specific federal programs noted in the rule: DOE WAP, HOME, CDBG, NSP and ESG. It would not be applicable to state Housing Trust Fund program funds. For the other comments provided about cost, which were from HOME subrecipients, first it should be noted that Builder's Risk is already required in existing HOME contracts, so this is something being added to rule, but already applicable. Second, it is noted that any costs are eligible costs under the grant and pose no new costs that would have to be borne by funds other than the state or federal assistance. Third, it is not expected that the costs associated with bonding would be applicable as they are only prompted for construction contracts in excess of $100,000. This comment identified the need for a clarification in section (a) of the rule- the standard for the bond requirement is not based on the Subrecipient's contract with the Department, but rather the construction contract between the Subrecipient and the contractor, which based on HOME program limitations would likely not exceed $100,000 (for example, the construction activity for Contract for Deed is typically $85,000). To ensure consistency, and provide clarification, clarifications made in §1.404 relating to Subrecipients and vendors are also applicable to this section and have been edited as shown below.

(1) For construction contracts exceeding $100,000, the Subrecipient must request and receive Department approval of the bonding policy and requirements of the Subrecipient to ensure that the Department is adequately protected.

(2) For construction contracts in excess of $100,000, and for which the Department has not made a determination that the Department's interest is adequately protected, a "bid guarantee" from each bidder equivalent to 5% of the bid price shall be requested.

(a)(2):

(A) A performance bond on the part of the Subrecipient for 100% of the contract price. A "performance bond" is one executed in connection with a contract, to secure fulfillment of all obligations under such contract.

(B) A payment bond on the part of the subcontractor/vendor for 100% of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

6. §1.406, Fidelity Bond Requirements

COMMENT SUMMARY: The commenter noted that the requirement of a fidelity bond is an unnecessary requirement (#1).

STAFF RESPONSE: The commenter did not specify why the requirement is unnecessary, but the Department does not agree. The requirement for a fidelity bond was added for some programs because in the last several years there have been several instances of Subrecipients who have left houses incomplete and the Department and the households did not have an immediate remedy. Had a fidelity bond requirement been in place, a more expedient recourse may have been possible. The Department believes this is a prudent requirement.

The Board approved the adoption of this new rule on November 10, 2016.

STATUTORY AUTHORITY. This rule is adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rule affects no other code, article, or statute. Subchapter D. Uniform Guidance for Recipients of Federal and State Funds.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605820

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

CHAPTER 2. ENFORCEMENT
SUBCHAPTER A. GENERAL

10 TAC §2.102

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 2, Subchapter A, General, §2.102, Definitions without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6862) and will not be republished.

REASONED JUSTIFICATION: The purpose of the amendments is to revise the introductory language to more clearly indicate that definitions refer back to other Chapters in this Title, and to revise the definition of Enforcement Committee.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning these proposed amendments.

The Board approved the adoption of these amendments on November 10, 2016.

STATUTORY AUTHORITY. The amendments are adopted pursuant to the authority of Tex. Gov't Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The amendments affect no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605809
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER B. ENFORCEMENT REGARDING COMMUNITY AFFAIRS CONTRACT SUBRECIPIENTS

10 TAC §2.201, §2.202

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 2, Enforcement, Subchapter B, Enforcement Regarding Community Affairs Contract Subrecipients. The rule is adopted for repeal in connection with the adoption of new Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapter 6, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6863).

REASONED JUSTIFICATION: The purpose of the repeal is to remove this subchapter and, under separate action, rename this subchapter, revise the sections previously covered by this subchapter relating to cost reimbursement, sanctions and contract closeout, and add a new section to address Termination and Reduction of Funding for CSBG Eligible Entities.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. No comments were received concerning this proposed repeal.

The Board approved the adoption of this repeal on November 10, 2016.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Tex. Gov't Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute.

§2.201. Modified Reimbursement.

§2.202. Sanctions and Contract Closeout.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605818
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER B. ENFORCEMENT FOR NONCOMPLINCE WITH PROGRAM REQUIREMENTS OF CHAPTERS 6 AND 7

10 TAC §§2.201 - 2.204

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 2, Enforcement, Subchapter B, Enforcement for Noncompliance with Program Requirements of Chapters 6 and 7, §§2.201 - 2.204 without changes to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6864) and will not be republished.

REASONED JUSTIFICATION: The purpose of the new sections is to effectuate a redrafting of this rule that recrafts the sections previously covered by this subchapter relating to cost reimbursement, sanctions and contract closeout, and adds a new section to address Termination and Reduction of Funding for CSBG Eligible Entities.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between

September 9, 2016 and October 10, 2016. No comments were received concerning the new rules.

The Board approved the adoption of the new rules on November 10, 2016.

STATUTORY AUTHORITY. The new rules are adopted pursuant to the authority of Texas Gov't Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rules affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605819
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

CHAPTER 6. COMMUNITY AFFAIRS PROGRAMS

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 6, Community Affairs Programs including Subchapter A, General Provisions, 10 TAC §§6.1 - 6.10; Subchapter B, Community Services Block Grant, 10 TAC §§6.201 - 6.214; Subchapter C, Comprehensive Energy Assistance Program, 10 TAC §§6.301 - 6.313; and Subchapter D, Weatherization Assistance Program, 10 TAC §§6.401 - 6.417 to be published for adoption in the *Texas Register* with changes made in response to public comment to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6885).

REASONED JUSTIFICATION: The purpose of the new Chapter 6 is to effectuate a reorganization of the rules that govern the Community Affairs programs including Community Services Block Grant, Comprehensive Energy Assistance Program, and Weatherization Assistance Program so that the rules addressing those programs that currently are provided for in Chapter 5 relating to the Community Affairs Programs will now be addressed in a new and separately proposed chapter.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. Comment was received from 21 organizations.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. Comments and responses are presented in the order they appear in the rule with comments received from 21 organizations. Note that comment numbers were assigned as all comment was received for all chapters being considered in the CA Rules Project. Only those commenters who made comments on Chapter 6 are included in the list and the numbers given are used throughout to identify who made comments on different items. (2) Magi York Executive Director, Panhandle Community Services: (3) Dan Boyd, Executive Director, Community Services of Northeast Texas; (5) George Simon, Executive Director, Tri-County Community Action; (6) Tama Shaw, Executive Director; Hill Country Community Action; (7) Kelly Franke, Executive Director, Combined Community Action; (8) Vicki Smith, Executive Director, Community Action Committee of Victoria, Texas; (9) Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (represents 35 of 41 CSBG Subrecipients, 35 of 39 CEAP Subrecipients, and 21 of 22 WAP Subrecipients); (10) Bobby Deike, Executive Director, Community Council of South Central Texas; (11) Kathy Majefski, WIC Director, Community Council of South Central Texas; (12) Bill Powell, Executive Director, South Plains Community Action Association; (13) Karen Swenson, Executive Director, Greater East Texas Community Action Program; (14) Deborah Vasquez, Human Services Administrator, City of San Antonio, Dept. of Human Services; (16) City of San Antonio, Dept. of Human Services, Panhandle Community Services; (17) Amanda Shelton, Director of Client Services, Gulf Coast Community Services Association; (18) Ann Awalt, Executive Director, Community Action Corporation of South Texas; (19) Debra Thomas, Executive Director, Debra Thomas, Executive Director; (20) Adan Estrada, Executive Director, Big Bend Community Action Committee; (21) Maria Allen, HHS Manager, Austin/Travis County Health and Human Services Dept.; (22) Aaron Setliff, Director of Public Policy, Texas Council on Family Violence; (23) Sommer Harrison, Director of Weatherization, Neighborhood Centers Inc.; and (24) Laura Ponce, Executive Director, Project Bravo.

1. Subchapter A. General Provisions, §6.4. Income Determination.

COMMENT SUMMARY: The commenters suggested eliminating references in subsection (a) and (b) to "gross" or "net" income and instead referencing "annual income per grant guidelines" because this edit would afford each program to use its own method of income determination (#3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). Comment also suggests adding clarification to (a)(2) that includes payments to children under the age of 18 made payable to a person over the age of 18, to be sure that eligible children are not disqualified (#3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). One commenter noted that the rule needed to provide guidance in (a) and in (d)(1) that directly addresses business income and the appropriate income determination method (#17). One commenter recommended in 6.4(b) revising from "30 days prior to date of application" to "within 30 days of the application date" (#17). One commenter requested that unemployment compensation be removed as a reference for annualized income because unemployment compensation has a time period and a household could be inadvertently disqualified (#17). One commenter noted that since child support payments may not be deducted by payor, and the payor is contributing financially to their dependents, these dependents shall be included in their household size (#17).

STAFF RESPONSE: As it relates to the references to "gross" or "net" income and replacing that language with "annual income per grant guidelines" the Department does not recommend a rule change. Federal grant guidelines do not exist with such specificity in income determination for LIHEAP or CSBG, and (as a block grant) that guidance is expected to be generated by the state; so a rule referencing only "grant guidelines" would not provide clear guidance. To ensure consistency among programs, the Department had elected in prior rulemaking to use the income guidelines determined by the Department of Energy

("DOE") for the weatherization program, which many of the subrecipients administer. The terminology of "gross" or "net" is consistent with the DOE regulations. Therefore, no change is suggested. As it relates to the comment regarding clarification on payments for children in the excluded income list, the Department agrees and the following edit is being made to Item (U) in the list under (a)(2). As it relates to the comment on addressing business income, the rule does address business income in (a). Staff concurs with the edit in (b) relating to the application date edited as shown below. As it relates to comment regarding unemployment compensation being removed as a reference for annualized income, staff concurs and the proposed rule is edited as shown below. As it relates to the comment regarding child support, the Department recommends no change to ensure consistency of the section with DOE income guidance.

(a)(2)(U) Income of Household members under eighteen (18) years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.

(d)(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period.

2. Subchapter A, General Provisions, §6.7, Subrecipient Reporting

COMMENT SUMMARY: One commenter noted disagreement with section (d) and asked that if it remained they be provided additional guidance on how they can prove expended funds and request release of funds (#23).

STAFF RESPONSE: The Department does not agree in removing this section, which ensures that for those agencies with cash on hand, more funds are not provided. This is a fiscal control issue. As requested, further guidance on this issue will be provided to the commenter.

3. Subchapter A, General Provisions, §6.8, Applicant/Customer Denials and Appeal Rights

COMMENT SUMMARY: One commenter suggested removing the term "adverse" and replacing it with the term "notification of denial" (#17).

STAFF RESPONSE: The Department does not agree with this change. To revise it to "notification of denial" will not account for situations in which the applicant was assisted in part, for instance, so they were not denied, but were not granted full benefits or perhaps may feel they were harmed in some other way.

4. Subchapter A, General Provisions, §6.10, Compliance Monitoring

COMMENT SUMMARY: Commenter recommends reinstating exit briefings after an on-site monitoring is conducted, which currently exists in program rules, because this activity provides critical feedback to the Subrecipient while Department monitors are present and allows Subrecipient staff to address an issue possibly misunderstood by a monitor by providing proof of compliance that may result in a potential finding being cleared on the spot. Subrecipients prefer to know up front if they are doing something wrong and not have to wait 30 days or later, which allows noncompliance to continue for an extended period of time. The commenter notes that at minimum, Subrecipients should be given a de-briefing with a summary of concerns and feedback on their staff responsiveness and interaction with the monitors, etc. The commenter also notes that the feedback on this section is consistent with the network's feedback through the American Customer Satisfaction Index survey results (#3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). A commenter noted that not providing exit briefings emphasizes the "gotcha" nature of monitoring, as opposed to exit briefings being used as a tool for actually improving agency performance (#3). One commenter also noted that monitoring reports that, due to not having an exit, may have a mistaken finding, can through the Open Records Request, become misconstrued by the media and public and possibly be consider libelous; an exit briefing has proven over the years to be an effective means of communication between the Department and Subrecipients (#24).

STAFF RESPONSE: The Department does perform exit briefings as a general standard operating procedure and will continue to do so as a general policy, but because some valid exceptions may exist, this is not being put in the rule as a requirement. Examples of valid reasons for not conducting an exit briefing include but are not limited to issues of concern for monitor safety, suspected fraud, waste or abuse, identification of issues that need guidance from Department counsel before communication to the subrecipient, and events of emergency or disaster that require a monitor to leave prior to the exit briefing.

5. Subchapter B, CSBG, §6.201, Definitions

COMMENT SUMMARY: One commenter suggests adding definitions for Short-Term Case Management and Long-Term Case Management (#17).

STAFF RESPONSE: While not listed in the definition section, these terms are defined in 6.207(i)(1): "Subrecipients are required to evaluate and assess the effect their case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability."

6. Subchapter B, CSBG, §6.203.Formula for Distribution of CSBG Funds

COMMENT SUMMARY: The commenter recommends revising the first sentence in section (b) to: "…information on persons not to exceed 125% of poverty" to be sure the rule specifically echoes the federal regulations which state "not to exceed 125 percent" (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). The commenter also recommends referencing Community Commons in the rule because the Department staff specifically instructs Subrecipients to utilize the Community Commons information (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24).

STAFF RESPONSE: Regarding the edit to section (b), staff agrees and the change is reflected below. Regarding the suggestion that the rule reference Community Commons in this section, staff does not agree. The rule currently indicates the formula will be derived from "the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available." That is actual source data. Alternatively, Community

Commons is a website on which data from other sources is compiled and organized in ways that make it far more usable; the website provides for public access to thousands of meaningful data layers that allow mapping and reporting capabilities at a community level. For determining a formula for fund distribution, source data is the more appropriate resource, whereas the Department recommends that Subrecipients take advantage of the resources offered by Community Commons as a tool in identifying their needs, because it is a far more effective tool at the community level than a subrecipient having to navigate and interpret census data directly. Community Commons site is an effort managed by a three-organization nonprofit team: Institute for People, Place and Possibility, the Center for Applied Research and Environmental Systems, and Community Initiatives. While not expected, Community Commons could discontinue its efforts at any time.

The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty.

7. Subchapter B, CSBG, §6.204.Use of Funds.

COMMENT SUMMARY: The commenters recommend removing the restrictions proposed in sections (b), (c) and (d) on the use of CSBG funds. Commenters request that the Department allow the flexibility of the use of CSBG funds as intended by the CSBG Act by returning to the existing rule. Commenters believe that the proposed rule will: strip away local control and flexibility afforded by the CSBG Act; take away decision-making authority from the local tripartite boards in getting to determine the best use of CSBG funds to serve the needs of their community; and cause the community input received from participating in local needs assessments or hearings to become obsolete. Commenters shared that Information Memorandum (IM) Number 37 by the Office of Community Services (OCS) specifically states that CSBG funds may be used to undertake a very broad range of activities and the IM clarifies that the relatively unusual flexibility may generate questions therefore guidance is provided and the Office of Community Services ("OCS") reaffirms that such expenditures are allowable costs under the CSBG statute. The IM confirms that CSBG does not function solely as a standalone program, and CSBG funding can support: (1) creation of new programs and services, (2) augmentation of existing programs and services, and (3) organizational infrastructure required to coordinate and enhance the multiple programs and resources that address poverty conditions in the community. The CSBG reauthorizing statute explicitly permits the use of CSBG funds to augment existing community-based programs (#2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 24).

Multiple commenters emphasized the importance of local linkages and expressed that the proposed rule worked against that premise; commenters provided examples of how they, in spite of being very successful, would potentially not meet this litmus test, because they focus on leveraging their resources locally through extensive partnerships and such linkages (#3, 13, 17, 18, 21, 24). For example, Panhandle Community Services noted: "The CSBG Manager and staff have worked diligently to engage in over 600 partnerships across the Panhandle to share resources in assisting our individuals in our TOPS program meet their needs…" (#2) Another commenter noted that they set aside funding to the senior nutrition program, but having to allot a set amount to direct support and for TOP clients will not allow the continued funding for the senior nutrition program, which is permitted by IM 37 and the rule could adversely affect that program which is focused on one of the top five needs in their community of food insecurity (#18). Emphasis should be on delivery of services, not on which funding source provides the services (#6, 13, 24). Several commenters noted that tracking and documenting information in the manner suggested in the proposed rule is not something currently performed by case managers and would add additional cost/time (#3, 6). Several commenters noted that a proposed change could be letting the Subrecipients choose their own dollar figure or targets as a guide (#3, 18). Several commenters had calculated the amount of funds per household that would need to be applied if these percentages were adopted and noted that those amounts were not realistic considering the portion of that amount that is currently generated from other partners (#3, 6, 8, 10, 11, 24). One commenter noted that mandating funds specifically to the TOP program essentially directs subrecipients to ignore the data that was provided by the local needs assessment and local input process and disregards the experience of the Subrecipient's board.

Commenters further note that as it relates to section (d) Subrecipients are federally permitted to carry over up to 20% of CSBG funds from one contract year to another. Many Subrecipients reserve up to 20% of their funds to keep the lights on and employees paid while waiting for a new contract. They state that the proposed rule is punitive in two ways: Subrecipients must fully expend all funds by the end of a contract period and then have no funds while waiting for a new contract to draw down funds, or an extension is requested and then flexibility and local control is lost in having to spend the funds on direct services (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24). Several commenters noted that the Department does not have a demonstrated history of releasing new contracts prior to January 1 (#10, 11). A commenter notes that as it relates to (d), there may be legal concerns as well because the rule would force an agency that carries over funds, which is federally permissible, to change the use of funds and revise the agency budget in January (#3). Concern was also voiced that the intersection of the limitations under (a) and (b) with the carryover requirement could result in large amounts of unspent CSBG funds statewide (#6). One commenter emphasized that they have utilized the carry-over option to ensure services are maintained which is often the only option at the beginning of a year. The reliance on federal Continuing Resolutions for funding delays contracts as do Department delays. The carryover funds need to remain flexible to assist households in vulnerable times in January and February (#13). One commenter suggested that if the rule remains, an alternative could be that CSBG contracts be written as thirteen month contracts rather than twelve month contracts, allowing for a one month overlap into the following year, thereby giving the agencies a buffer period in case the state does not get contracts out timely, allowing the state the room to push non-conforming entities, and allowing for more effective expenditure of funds (#18).

STAFF RESPONSE: The Department acknowledges the perspective of the commenters and their concerns and recommends deleting the following text as requested.

(b) Except in the case of a Subrecipient whose total Contract is $250,000 or less, at least 20% of a Contract must be used for Direct Customer Support for customers not enrolled in TOP case management.

(c) Except in the case of a Subrecipient whose total Contract is $250,000 or less, an additional 10, 11% of a Contract year's

funds must be expended on direct benefits for customers enrolled in TOP case management. This amount does not include case manager salary or fringe.

(d) In the event that a Subrecipient does not expend the funds allocated through the formula described in subsection 6.203 of this section, the Subrecipient may request an extension no earlier than October 1 and no later than December 1. If granted, the Subrecipient will have two active Contracts, and the funds spent after the original Contract period in the Contract that was extended must only be used for direct services, not including case manager salaries or fringe.

8. Subchapter B, CSBG, §6.206. CSBG Needs Assessment, Community Action Plan, and Strategic Plan.

COMMENT SUMMARY: One commenter noted that the rule provides for a set time frame, no later than 6 months prior to the required submission date, for the Department to provide guidance on the content requirements for the Community Needs Assessment as the Department does not generally issue guidance in sufficient advance notice for Subrecipients to have time to plan accordingly (#18).

STAFF RESPONSE: Staff concurs with the critique and will make every effort to improve its release time in this regard; however, as this is an internal process issue, no rule revision is recommended.

9. Subchapter B, CSBG, §6.207. Subrecipient Requirements

COMMENT SUMMARY: Commenters recommend revising the first sentence in section (d) to read: CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services, as may be necessary to counteract conditions of starvation and malnutrition among low-income individuals. The revision is requested to make the language in the rule consistent with the required assurances of the state under 42 U.S.C 9908, Application and plan (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). Commenters also recommended that in section (e) the Department remove "and other CSBG organizations" because they believe this portion of the rule would not apply to entities receiving CSBG discretionary funds. They also suggested in (e) changing "are required" to "may" to allow the flexibility and local decision of CSBG Eligible Entities to work with other governmental and social service programs to coordinate employment and training activities (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). One commenter noted that this whole section of the rule could be replaced with "Subrecipients must comply with the CSBG Act" out of concern that the two items listed in (d) and (e) are not "steadfast requirements" for CSBG expenditures or programmatic activity (#3).

STAFF RESPONSE: Staff concurs with the requested edit in relation to section (d) and the proposed change is below. As it relates to section (e), the Department does not recommend a change. As it relates to the first suggested change in (e) relating to other CSBG organizations, no edit is suggested by the Department because while the CSBG Act references this requirement only in relation to eligible entities (which would exclude discretionary recipients), the most recent updates to the Workforce Innovation and Opportunity Act ("WIOA"), as applicable, are more expansive and appears to pull in other recipients of CSBG as well. As it relates to the second request relating to (e) and changing the requirement to a "may," the Department does not recommend an edit. This is in fact a requirement - not an option - and use of the term "may" would remove the fact that it is federally required, if a subrecipient chooses to do employment and training activities covered by WIOA . It should be noted that this section in rule is in fact quite broad in the ways that the CSBG entity could work on the provision of activities and staff does not believe that it would take away local flexibility or decision-making. As to the comment that (d) and (e) are not steadfast requirements, the Department disagrees and believes if an entity chooses to do employment or training activities with CSBG funds it must follow the federal requirements as reflected in 20 CFR Parts 676, 677, and 678.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

10. Subchapter B, CSBG, §6.210, Board Structure.

COMMENT SUMMARY: The commenters recommend revising the first sentence in section (b) to read: "For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board composed so as to assure that not fewer than 1/3 of the members are persons chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served, reside in the neighborhood served, and are able to participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) above." They suggest this change because they state that the composition of the advisory board and selection process should be outlined in the rule, that the recommended text is consistent with 42 U.S.C. §9908 and 9910 relating to Applications and Tripartite boards, and that they are concerned that without the added text, low-income representatives are not guaranteed a voice on the advisory board. The commenter notes that in reference to public organizations, the CSBG Act specifically references the selection and representation of low-income individuals and families (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24).

The commenter also recommends that in section (d) amending the second sentence to read: "This procedure, … For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws; failure…" There was extensive rationale provided for why this change was being recommended which are broadly summarized here but not recounted in extensive detail. First commenters note that the CSBG Act requires Private Nonprofit and Public Organizations to comply with the tripartite board requirements, but it does not specify the location of written procedures. They state that CSBG IM Number 82, Tripartite Boards, by the Office of Community Services (OCS), addresses this issue in such a way that the commenter does not see that the rule as proposed by the Department is specifically required (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24).

The commenter indicates that the Department has stated the reason for this requirement is compliance with Texas Business Organizations Code; however the commenter notes that in that Code, in Sections 22.102 and Sec. 22.103, in addressing adoption of the initial bylaws, it states that bylaws may contain provisions for the regulation and management of the affairs of the corporation that are consistent with law and the certificate of forma-

tion" but do not say "must." Further, Section 22.103, titled "Inconsistency Between Certificate of Formation and Bylaw" states that the number of directors by amendment to the bylaws controls over the number stated in the certificate of formation, "unless the certificate of formation provides that a change in the number of directors may be made only by amendment to the certificate." The commenter also notes that the Texas Business Organizations Code do not speak to the selection process rather the number of directors, and further emphasized that the Sections referenced of the Texas Business Organizations Code were last amended by the legislature in 2005, effective January 1, 2006. It is unclear why there is a new interpretation of the law causing more paperwork burden to the Subrecipients and less time to do the much needed work in our communities and help Texans in need of assistance. The commenters conclude that at a minimum a change to the Articles of Incorporation requires: a filing fee with the Secretary of State and a wait period to process the documents, and that by simply adding "Bylaws" to the proposed rule it will afford the flexibility to comply with the rule as applicable with the Subrecipients' Articles of Incorporation / Certificate of Formation or Bylaws. For this section different commenters provided varying comments including several solutions (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24).

One commenter suggested a change for (d) that stipulates that non-profit entities have no default procedures in their Articles of Incorporation that would cause the entity to be inconsistent with the Board selection requirements (#3) and noted that CAPLAW, in September 2016, advised CSBG subrecipients to not put Board selection processes into their Articles (#3). Another commenter noted that the Department had referenced Organizational Standards 5.1 and 5.2 to explain the reason for this rule change, but that neither of those two standards reference Articles of Incorporation (#7). One commenter noted that its legal counsel specifically noted that the democratic process should properly be in the Bylaws, not the Articles (#10, 11). One commenter noted that amending the Articles of Formation will not only "reset its corporate founding date" but could also change board composition (#24).

STAFF RESPONSE: As it relates to section (b), the Department does not agree that the language suggested needs to be added. The rule as proposed addresses in section (a) what is being requested to be added to section (b); as proposed it references that Public Organizations under section (b) must satisfy the requirements in (a) - this removes redundancy and ensures consistent interpretation. As it relates to section (d), the Department suggests several edits to the rule that should sufficiently address the noted concerns and follows the suggestion of commenter #3, Community Services of Northeast Texas. The rule will now state that the method of board selection must be addressed in either the Certificate of Formation or the Bylaws, and indicate that the Bylaws may not be inconsistent with the method of selection identified in the Articles of Incorporation/Certificate of Formation.

(B) … For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws, but the method detailed in the Bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this Subchapter. For Public Organizations the democratic procedure must be written in the advisory board's procedures and approved at a board meeting.

11. Subchapter B, CSBG, §6.213. Board Responsibility

COMMENT SUMMARY: Two commenters asked that a waiver or exception be permitted to the residency requirement to allow for board members that do not reside in the service county and asked that it allow for working in the service county (#17); it was noted that this is particularly challenging for Subrecipients who have different coverage areas for different programs that they administer (#18).

STAFF RESPONSE: The Department agrees that unique circumstances can arise that may warrant an exception and has revised the rule as such.

(d) Residence Requirement. All board members shall reside within the Subrecipient's CSBG service area designated by the CSBG contract unless otherwise approved in advance by the Department in writing. Board members should be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater low-income population. Low-income representatives must reside in the area that they represent.

12. Subchapter C, CEAP, §6.301.Background and Definitions.

COMMENT SUMMARY: The commenters recommend simplifying the definition of Life Threatening Crisis in (b)(3) to read that a life-threatening condition exists when at least one person in the applicant household would be adversely affected without the Subrecipient's utility assistance, to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Commenters stated that the rule as currently drafted, referencing medical necessity, puts the Subrecipient employees in the position of making medical determinations (#3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). Commenters also suggested that the definition for Extreme Weather Condition be simplified such that identification of weather conditions is made by Subrecipients defining weather triggers in their local Service Delivery Plans. Commenters stated that the definition of Extreme Weather Conditions is outdated, not in accordance with guidance received from Department staff, and does not afford the determination of extreme conditions at the local level which vary from different parts of the state (#5, 6, 7, 9). One commenter notes alternatively that temperatures do not need to be locally benchmarked but that crisis can be set at over 90 degrees and/or below 39 degrees, irrespective of average temperatures in the local service area and submitted conclusions relating to this from June Wingert, from the Baylor College of Medicine (#3).

STAFF RESPONSE: As it relates to the definition for Life Threatening Crisis, in response to commenter's concerns about medical determinations, the Department made revisions as shown below but retained some language providing examples. As it relates to the definition for Extreme Weather Conditions the Department agrees in part. The definition is not outdated, but is in fact a newly proposed suggestion. Because the new definition is tied to localized historic weather data it very much allows for local level variance in relation to weather. However, the Department understands the preference for more local determination. A revised definition is provided that maintains the 2 degree variance, but allows for the variance to be greater than 2 degrees if the Subrecipient chooses, and allows for data sources other than the Normals data option in the proposed rule.

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household would be adversely affected without the Subrecipient's utility assistance, because

there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional.

(1) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme weather conditions will exist when the temperature has been at least 2 degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), when the temperature is at least 2 degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme weather conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at http://www.ncdc.noaa.gov/cdo-web/datatools/normals, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipients must maintain documentation of local temperatures and reflect their standard for extreme weather conditions in their Service Delivery Plan.

13. Subchapter C, CEAP, §§6.304. Deobligation and Reobligation of CEAP Funds

COMMENT SUMMARY: The commenter recommends not making this change to the rule yet until further research and options are explored through a workgroup. The commenters agree that the network of Texas CEAP recipients need to have a plan to ensure federal funds are expended timely and not returned to the federal government, but the proposed rule could cause a Subrecipient to be out of compliance when funds are not released timely by the Department or when unexpended funds from a previous year are made available which delays the expenditure of the current year funds. In either case, this can cause a ripple effect triggering deobligation when the Subrecipient is actually performing sufficiently. A work group would help identify a well-thought out solution (#3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24). One commenter emphasized that because the utility assistance needs of households vary by the climate area in which they live, it is unrealistic to expect pledges to be made by a certain point in time that does not consider weather trends (#13). One commenter suggested that if the Department does not remove the language, the rule should at least define the benchmark as the 5th month after release of the current year contract, and adjusted based on extensions or new contracts (#10, 11). One commenter noted that within (b) it is unlikely for a Subrecipient to be able to determine whether they are within the lowest 20% because it relates to relative ranking; this is effectively having Subrecipients compete against one another when they may not face the same challenges, and further the rule does not account for extenuating circumstances (#18).

STAFF RESPONSE: Staff concurs in part. As currently drafted the CEAP deobligation and reobligation section has several components. The one that was most critiqued was section (a) which prompts deobligation if at least 50% of a Subrecipients funds for the Program year have not been obligated by the May monthly report. Staff concurs that this may have unintended effects and agrees to remove that section, so that further dialogue can occur. However, the reason the section was proposed initially is because there are new federal interpretations relating to how CEAP funds must be expended and by when, prior to them being lost to the state. The Department proposed the section to limit the likelihood of that happening. Removing the rule entirely leaves the Department in a position of having taken no affirmative steps to ensure funds are not lost. Therefore, staff is recommending retaining the second portion of the deobligation rule in section (b) that says the Department may deobligate from the lowest performers, but with some revisions. Staff believes if that section is retained, it leaves some recourse by which to pursue greater expenditure and minimize risk of loss of funds, while establishing a work group to identify a more comprehensive solution that can be brought forth in future rulemaking. The revisions made to this section reduce the percentage of those to be affected from 20% to 10%, clarify the trigger is based on expenditure and obligations, and adds the ability for the Department to make exceptions if needed in extenuating circumstances. Staff suggests the following responsive revisions.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may determine to deobligate funds from those Subrecipients who fall within the lowest 10% of Subrecipients based on combined expenditures and obligations as of the May report and whose combined expenditures and obligations are less than 80%, unless an exception is approved by the Department in writing for extenuating circumstances.

(b) The cumulative amount of deobligated funds will be allocated proportionally by formula amongst all Subrecipients that did not have any funds deobligated.

(c) Subrecipients which have had funds deobligated under option (a) above that fully expend the reduced amount of their Contract, will have access to the full amount of their following Program Year CEAP allocation. Subrecipients which have had funds deobligated under option (a) above that fail to fully expend the reduced amount of their Contract will automatically have their following Program Year CEAP allocation deobligated by the lesser of 24.99% or the proportional amount that had been deobligated in the prior year.

(d) The cumulative balance of the funds made available through subsection (c) above will be allocated proportionally by formula to the Subrecipients not having funds reduced under that subsection.

(e) In no event will deobligations that occur through any of the clauses above exceed 24.99% of the Subrecipient's Program Year CEAP formula allocation.

14. Subchapter C, CEAP, §§6.306.Service Delivery Plan.

COMMENT SUMMARY: Commenter suggests adding "and local crisis triggers" to the end of the paragraph to coincide with the edit requested earlier relating to the definition for Extreme Weather Conditions being determined in the plans (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24).

STAFF RESPONSE: Staff concurs with a needed edit. The revised definition of Extreme Weather Conditions references the need for the Service Delivery Plan to address the local weather crisis triggers and therefore a suggested revision for consistency is below.

The SDP must establish the priority rating sheet and priority households, the alternate billing method, how customer education is being addressed, how the Subrecipient is determining the

number of payments to be made and which types of Households are qualified for a given number of payments, and identify the local standard to be used for Extreme Weather Conditions.

15. Subchapter D, WAP, §6.405. Deobligation and Reobligation of Awarded Funds.

COMMENT SUMMARY: Like with deobligation of CEAP, the commenter suggests the Department table this rule until further research and options are explored through a workgroup. As an alternative, the Department could establish a dollar threshold to alleviate the administrative burden of small funded Subrecipients with limited staff to comply with this onerous process. Commenters indicated that they agree Weatherization funds should be expended timely and not returned to the federal government, but that there are too many unpredictable factors causing delay on productivity, such as weather conditions, contractor performance, loss of staff, loss of certified staff, late contracts or contract amendments from the Department. Each time a trigger is met due to unpredictable factors it causes the Subrecipient an administrative burden causing further delay of weatherization services. The process does not ensure that units will be weatherized sooner, rather they could further delay the services. Commenters stated that Subrecipients with a good history over the span of several years should not be burdened with this administrative and onerous process (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 24). Two commenters suggested that the deobligation rule should only be applied for contracts in excess of $150,000 (#10, 11). One commenter gave an example of how they would have missed the trigger in the September reporting period in 2015 as well as the fifth deadline and the seventh deadline in part because funding was increased, but they successfully completed the year and exceeded the target of units weatherized; contract amendments and increases make meeting these benchmarks very challenging (#18). One commenter suggested an alternative method in which the Department has a list of agencies that regularly fail to spend down their contracts over a period of years and utilizes the list to provide training and then if needed, deobligate (#18). One commenter indicated their support of this rule remaining as proposed (#23).

STAFF RESPONSE: Unlike with the CEAP policy, a deobligation policy for the weatherization program is already in existence, and is not a new proposal in the proposed rule. While staff is happy to host a work group to continue to discuss the deobligation of weatherization funds and make future changes to the approach, it does not recommend completely eliminating the existing procedure for administering deobligations in the rule. Staff recommends adoption of the proposed rule with several edits, but commits that it will take out further subsequent rulemaking in the future if a work group results in alternative suggestions for this issue. As it relates to the comment that deobligation should only apply to contracts in excess of $150,000, the Department does not agree. The timely activity of expenditures is germane regardless of the size of the contract and because the requirement is percentage based it does not place any higher burden on smaller contracts. The edits suggested to this section are being made to address the comment that new increases in funds make achieving targets challenging.

(b) A written 'Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of the Subrecipient by the Department seven (7) business days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing funds by at least 20% has been provided to the Subrecipient in the prior 90 days.

16. General Comments

COMMENT SUMMARY: Commenters noted as general comments that consistent with the results of the ACSI survey, agencies want local control of their CAP Plans, reduction of over restrictive rules, support for the flexibility of CSBG funds to meet the needs of low-income families and individuals, and to implement the CSBG program consistent with the Congressional intent. They suggest creating workgroups to discuss ideas, concerns, etc., suggesting that this would have been beneficial in reference to the proposed rules regarding Use of CSBG Funds and CEAP / WAP Deobligation and Reobligation processes. They would like to see rules and procedures simplified to be more productive and compliant (#5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 24). One commenter noted that: "In my 39 year tenure with Community Action it has progressively become more difficult to administer our programs because of the continual rule changes and addition of new rules most of which requires spending money on additional staff, attorneys, data base programs, etc. leaving us fewer dollars to actually help our clients." (#6). One commenter indicated that the Department needs to consider how it affected the rules process by mandating Subrecipients plan their 2017 CSBG budgets on proposed rules and not currently what was adopted rule; in spite of that requirement being lifted, the commenter suggests that there is a possibility that the requirement before being lifted, affected some Subrecipients from commenting against the rules (#10, 11). One commenter notes that a CSBG reauthorization bill has been introduced in Congress with bi-partisan support and these proposed new rules will be significantly impacted when that bill is adopted (#13).

STAFF RESPONSE: The Department agrees in limiting restrictive rules to the extent possible and is equally committed to ensuring the Congressional intent of the program is achieved; the Department must also balance that concept with ensuring funds are spent timely and in fully compliant and accountable ways. The Department does not endeavor to generate rules for the sake of adding regulation, but does so because it believes that it is ensuring such compliant and accountable fund management. As has been noted in the previous reasoned responses, the Department has been responsive to comment and where possible has made suggested changes. It should be noted that nothing in the rules reduces local control of CAP Plans - there is guidance provided by the Department each year on how the Plan must be completed that ensures the Plan reflects all of the federally required components, but it is the Subrecipient who fully determines how it will plan and use its CSBG funds. As it relates to the comment regarding the CSBG budget process, it should be noted that this requirement was in fact removed, and any Subrecipient has the opportunity to request changes/amendments if they feel that they need to; further the budget process is entirely separate and independent from the rule making process.

The Board approved the adoption of this new rule on November 10, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§6.1 - 6.10

STATUTORY AUTHORITY. This rule is adopted pursuant to the authority of Tex. Gov't Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rules affect no other code, article, or statute.

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

The adopted new Chapter affects no other code, article or statute.

§6.1. Purpose and Goals.

(a) The rules established herein are for CSBG, LIHEAP, and DOE-WAP. Additional program specific requirements are contained within each program subchapter and Chapters 1 and 2 of this Title.

(b) Programs administered by the Community Affairs ("CA") Division of the Texas Department of Housing and Community Affairs (the "Department") support the Department's statutorily assigned mission.

(c) The Department accomplishes its mission chiefly by acting as a conduit for federal grant funds and other assistance for housing and community affairs programs. Ensuring program compliance with the state and federal laws that govern the CA programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

§6.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the CSBG, LIHEAP, and DOE-WAP programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise. Refer to Subchapters B, C, and D of this chapter for program specific definitions.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) Awarded Funds--The amount of funds or proportional share of funds committed by the Department's Board to a Subrecipient or service area.

(3) Categorical Eligible/Eligibility: Households determined to be income eligible because at least one member receives:

(A) SSI payments from the Social Security Administration; or

(B) Means Tested Veterans Program payments.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the *Federal Register.*

(6) Community Action Agencies ("CAAs")--Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(7) Community Services Block Grant ("CSBG")--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(8) Comprehensive Energy Assistance Program ("CEAP")--A LIHEAP-funded program to assist low-income Households, in meeting their immediate home energy needs.

(9) Concern--A policy, practice or procedure that has not yet resulted in a Finding or Deficiency but if not changed will or may result in Findings, Deficiencies and/or disallowed costs.

(10) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(11) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(12) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has conducted such review as it deems appropriate, which may be complete or limited, such as on a sampling basis, and approved backup documentation provided by the Subrecipient to support such costs. Such a review and approval does not serve as a final approval and all uses of advanced funds remain subject to review in connection with future or pending reviews, monitoring, or audits.

(13) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(14) Deficiency--Consistent with the CSBG Act, a Deficiency exists when an Eligible Entity has failed to comply with the terms of an agreement or a State plan, or to meet a State requirement. The Department's determination of a Deficiency may be based on the Eligible Entity's failure to provide CSBG services, or to meet appropriate standards, goals, and other requirements established by the State, including performance objectives. A Finding, Observation, or Concern that is not corrected, or is repeated, may become a Deficiency.

(15) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG non-discretionary funds.

(16) Department of Energy ("DOE")--Federal department that provides funding for a weatherization assistance program.

(17) Department of Health and Human Services ("HHS")--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

(19) Elderly Person--

(A) for CSBG, a person who is fifty-five (55) years of age or older; and

(B) for CEAP and WAP, a person who is 60 years of age or older.

(20) Emergency--defined as:

(A) a natural disaster;

(B) a significant home energy supply shortage or disruption;

(C) significant increase in the cost of home energy, as determined by the Secretary of HHS;

(D) a significant increase in home energy disconnections reported by a utility, a state regulatory agency, or another agency with necessary data;

(E) a significant increase in participation in a public benefit program such as the food stamp program carried out under the Food Stamp Act of 1977 (7 U.S.C. §§2011, *et seq.),* the national program to provide supplemental security income carried out under Title XVI of the Social Security Act (42 U.S.C. §§1381, *et seq.)* or the state temporary assistance for needy families program carried out under Part A of Title IV of the Social Security Act (42 U.S.C. §§601, *et seq.),* as determined by the head of the appropriate federal agency;

(F) a significant increase in unemployment, layoffs, or the number of Households with an individual applying for unemployment benefits, as determined by the Secretary of Labor; or

(G) an event meeting such criteria as the Secretary of HHS, at the discretion of the Secretary of HHS, may determine to be appropriate.

(21) Expenditure--An amount of money spent.

(22) Families with Young Children--A Household that includes a Child age five (5) or younger including a Household that has a pregnant woman.

(23) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income (as defined by the applicable program), determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--A Household that is billed more for the use of gas and electricity in their Dwelling Unit than the median of Low Income home energy expenditures. The amount is identified in the Contract.

(26) Household--Any individual or group of individuals who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For LIHEAP these persons customarily purchase residential energy in common or make undesignated payments for energy.

(27) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(28) Low Income Household--defined as:

(A) For DOE WAP, a Household whose total combined annual income is at or below 200% of the HHS Poverty Income guidelines;

(B) For CEAP and LIHEAP WAP, a Household whose total combined annual income is at or below 150% of the HHS Poverty Income guidelines or a Household who is Categorically Eligible; and

(C) For CSBG, a Household whose total combined annual income is at or below 125% of the HHS Poverty Income guidelines.

(29) Low Income Home Energy Assistance Program ("LIHEAP")--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(30) Means Tested Veterans Program--A program whereby applicants receive payments under §§415, 521, 541, or 542 of title 38, United States Code, or under §306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(31) Observation--A notable policy, practice or procedure observed though the course of monitoring.

(32) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(33) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(34) Outreach--The method that attempts to identify customers who are in need of services, alerts these customers to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential customers.

(35) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(36) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §§12131 - 12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(37) Population Density--The number of persons residing within a given geographic area of the state.

(38) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(39) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code and that is not a Public Organization.

(40) Production Schedule--The estimated monthly and quarterly performance targets and expenditures for a Contract period.

The Production schedule must be signed by the applicable approved signatory and approved by the Department in writing.

(41) Program Year--January 1 through December 31 of each calendar year for CSBG and LIHEAP and July 1 through June 30 of each calendar year for DOE WAP.

(42) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(43) Referral--The documented process of providing information to a customer Household about an agency, program, or professional person that can provide the service(s) needed by the customer.

(44) Reobligation--The reallocation of deobligated funds to other Subrecipients.

(45) Single Audit-- Single Audit--The audit required by Office of Management and Budget (OMB), 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

(46) State--The State of Texas or the Department, as indicated by context.

(47) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(48) Subgrant--An award of financial assistance in the form of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(49) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(50) Subrecipient--An organization that receives federal funds passed through the Department to operate the CSBG, CEAP, DOE WAP and/or LIHEAP program(s).

(51) Supplemental Security Income (SSI)--A means tested program run by the Social Security Administration.

(52) System for Award Management ("SAM")--Combined federal database that includes the Excluded Parties List System ("EPLS").

(53) Systematic Alien Verification for Entitlements ("SAVE")--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(54) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(55) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(56) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(57) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurances regarding fair billing practices, delivery procedures, and pricing for business transactions involving LIHEAP beneficiaries.

(58) Vulnerable Populations--Elderly persons, Persons with a Disability, and Households with a Child at or below the age of five.

(59) Weatherization Assistance Program ("WAP")--DOE and LIHEAP funded program designed to reduce the energy cost burden of Low Income Households through the installation of energy efficient weatherization materials and education in energy use.

§6.3. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 calendar days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs contract system.

(e) Amendments and Extensions to Contracts.

(1) Except for quarterly amendments to non-discretionary CSBG Contracts to add funds as they are received from HHS, and excluding amendments that move funds within budget categories but do not extend time or add funds, amendments and extension requests must be submitted in writing by the Subrecipient and will not be granted if any of the following circumstances exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of Contract performance;

(B) if the funds associated with the Contract will reach their federal expiration date within 45 calendar days of the request;

(C) if the Subrecipient is delinquent in the submission of their Single Audit or the Single Audit Certification form required by §1.403 in Chapter 1 of this Title;

(D) if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(E) for amendments adding funds (not applicable to amendments for extending time) if the Department has cited the Subrecipient for violations within §6.10 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(F) the Contract has expired; or

(G) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection (e) will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

§6.4. Income Determination.

(a) Eligibility for program assistance is determined under the Poverty Income Guidelines and calculated as described herein. Income means cash receipts earned and/or received by the applicant before taxes during applicable tax year(s), but not the excluded income listed in paragraph (2) of this subsection. Gross income is to be used, not net income, except that from non-farm or farm self-employment net receipts must be used *(i.e.,* receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses), and net income from gambling or lottery winnings.

(1) If an income source is not excluded below, it must be included when determining income eligibility.

(2) Excluded Income:

(A) Capital gains;

(B) Any assets drawn down as withdrawals from a bank;

(C) Balance of funds in a checking or savings account;

(D) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

(E) Proceeds from the sale of property, a house, or a car;

(F) One-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(G) Tax refunds, Earned Income Tax Credit refunds;

(H) Jury duty compensation;

(I) Gifts, loans, and lump-sum inheritances;

(J) One-time insurance payments, or compensation for injury;

(K) Non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(L) Reimbursements (for mileage, gas, lodging, meals, etc.);

(M) Employee fringe benefits such as food or housing received in lieu of wages;

(N) The value of food and fuel produced and consumed on farms;

(O) The imputed value of rent from owner-occupied non-farm or farm housing;

(P) Federal non-cash benefit programs as Medicare, Medicaid, SNAP, WIC, and school lunches, and housing assistance (Medicare deduction from Social Security Administration benefits should not be counted as income);

(Q) Combat zone pay to the military;

(R) Veterans (VA) Disability Payments;

(S) College scholarships, Pell and other grant sources, assistantships, fellowships and work study, VA Education Benefits ("GI Bill"), Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

(T) Child support payments (amount paid by payor may not be deducted from income);

(U) Income of Household members under eighteen (18) years of age including payment to children under the age of 18 made payable to a person over the age of 18;

(V) Stipends from senior companion programs, such as Retired Senior Volunteer Program and Foster Grandparents Program;

(W) AmeriCorps Program payments, allowances, earnings, and in-kind aid;

(X) Depreciation for farm or business assets;

(Y) Reverse mortgages;

(Z) Payments for care of Foster Children;

(AA) Payments or allowances made under the Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

(BB) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602(c));

(CC) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (93, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d));

(DD) Allowances, earnings, and payments to individuals participating in programs under the Workforce Innovation and Opportunity Act(29 U.S.C.3101));

(EE) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(g));

(FF) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858(q));

(GG) Certain payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

(HH) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459(e));

(II) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (94, §6);

(JJ) The first $2,000 of per capita shares received from judgment funds awarded by the National Indian Gaming Commission or the U.S. Claims Court, the interests of individual Indians in trust or restricted lands, and the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407 - 1408). This exclusion does not include proceeds of gaming operations regulated by the Commission;

(KK) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (101) or any other fund es-

tablished pursuant to the settlement in In Re Agent Orange Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(LL) Payments received under the Maine Indian Claims Settlement Act of 1980 (96, 25 U.S.C. 1728);

(MM) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (95);

(NN) Any allowance paid under the provisions of 38 U.S.C. 1833(c) to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802 - 05), children of women Vietnam veterans born with certain birth defects (38 U.S.C. 1811 - 16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

(OO) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

(PP) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. §1437a(b)(4));

(QQ) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled Elouise Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

(RR) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013-30 "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a)); and

(SS) Any other items which are excluded by virtue of federal or state legislation or by properly adopted federal regulations have taken effect. The Department will, from time to time, provide on its website updated links to such federal exceptions. Notwithstanding such information, a Subrecipient may rely on any adopted federal exception on and after the date on which it took effect.

(b) The requirements for determining whether an applicant Household is eligible for assistance require the Subrecipient to annualize the Household income based on verifiable documentation of income, within 30 days of the application date. Income is based on the Gross Annual Income for all household members 18 years or older. Annual gross income is the total amount of money earned annually before taxes or any deductions.

(c) The Subrecipient must document all sources of income, including excluded income, for 30 days prior to the date of application, for all household members 18 years of age or older.

(d) Identify all income sources, not on the excluded list, for income calculation.

(1) The Subrecipient must calculate projected annual income by annualizing current income. Income that may not last for a full 12 months should be calculated assuming current circumstances will last a full 12 months, unless it can be documented that employment is less than 12 months/year and pay is not prorated over the entire 12 month period. For incomes not able to be annualized over a twelve month period, the income shall be calculated on the total annual earning period *(e.g.,* for a teacher paid only nine months a year, the annual income should be the income earned during those nine months). In limited cases where income is not paid hourly, weekly, bi-weekly, semi-monthly nor monthly, the Subrecipient may contact the Department to determine an alternate calculation method in unique circumstances on a case-by-case basis.

(2) For all customers including those with categorical eligibility, the Subrecipient must collect verifiable documentation of Household income received in the 30 days prior to the date of application.

(3) Once all sources of income are known, Subrecipient must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

(A) Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

(B) Weekly wages by 52;

(C) Bi-weekly wages (paid every other week) by 26;

(D) Semi-monthly wages (paid twice each month) by 24; and

(E) Monthly wages by 12.

(4) Except where a more frequent period is required by federal regulation, re-certification of income eligibility must occur at least every twelve months.

(e) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(f) If proof of income is unobtainable, the applicant must complete and sign a Declaration of Income Statement (DIS).

(g) For CSBG and LIHEAP, a live in aide or attendant is not considered part of the Household for purposes of determining Household income, but is considered for a benefit based on the size of the Household. Example 4(1): A Household applies for assistance. There are four people in the Household. One of the four people is a live-in aide. To determine if the Household is qualified, annualize the income of the other three Household members and compare it to the three person income limit. However, if the amount of benefit is based on Household size (such as benefit level based on the number of people in the Household), then this is a four person Household.

(h) Subrecipients shall not discourage anyone from applying for assistance. Subrecipients shall provide all potential customers with an opportunity to apply for programs.

§6.5. Documentation and Frequency of Determining Customer Eligibility

(a) For LIHEAP and CSBG, income must be verified annually, with a new application each Program Year.

(b) For DOE-WAP income must be verified at the initial application. If the customer is on a wait-list for over 12 months since initial application, household income must be updated within at least 12 months of the unit being initially inspected.

§6.6. Subrecipient Contact Information and Required Notifications.

(a) In accordance with §1.22 of this title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department through the CA contract system and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) vacancies and new hires within 30 days of such occurrence.

(b) As vacancies exceed the 90 day threshold within the organization's advisory board of directors, the Department will be notified of

such vacancies and, if applicable, the sector the advisory board member represented.

(c) Contact information for all members of the board of directors or advisory board of directors must be provided to the Department and shall include: each board member's name, the position they hold, their term, their mailing address (which must be different from the organization's mailing address), phone number (different from the organization's phone number), fax number (if applicable), and the direct e-mail address for the chair of the advisory board.

(d) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA contract system. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

(e) Upon the hiring of a new program Coordinator *(e.g.,* the weatherization program coordinator) the Subrecipient is required to contact the Department with written notification within 30 days of the hiring and request training and technical assistance.

(f) Contact information for a primary and secondary contact are required to be provided to the Department and accurately maintained as it relates to the handling of disaster response and emergency services as provided for in §6.207(d).

§6.7. Subrecipient Reporting Requirements.

(a) Subrecipients must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested.

(b) Subrecipient shall reconcile their expenditures with their performance on at least a monthly basis before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(c) Subrecipient shall electronically submit to the Department no later than 45 days after the end of the Subrecipient Contract term a final expenditure or reimbursement and programmatic report utilizing the expenditure report and the performance report.

(d) If the Department has provided funds to a Subrecipient in excess of the amount of reported expenditures in the ensuing month's report, no additional funds will be released until those excess funds have been expended. For example, in January a Subrecipient requests and is advanced $50,000. In February, if the Subrecipient reports $10,000 in Expenditures and an anticipated need for $30,000, no funds will be released.

(e) CSBG Annual Report and National Survey. Federal requirements mandate all states to participate in the preparation of an annual performance measurement report. To comply with the requirements of 42 U.S.C. §9917, all CSBG Eligible Entities and other organizations receiving CSBG funds are required to participate.

(f) The Subrecipient shall submit other reports, data, and information on the performance of the DOE and LIHEAP-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

(g) Subrecipient shall submit other reports, data, and information on the performance of the federal program activities as required by the Department.

§6.8. Applicant/Customer Denials and Appeal Rights

(a) Subrecipient shall establish a denial of service complaint procedure to address written complaints from program applicants/customers. At a minimum, the procedures described in paragraphs (a)(1) - (8) of this subsection shall be included:

(1) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) calendar days of the determination. Such a determination is defined as a denial of assistance, but does not include a level of assistance lower than the possible program limits or a reduction in assistance, as long as such process is in accordance with the Subrecipient's written policy. This notification shall include written notice of the right of a hearing and specific reasons for the denial by program. The applicant wishing to appeal a decision must provide written notice to Subrecipient within twenty (20) days of receipt of the denial notice.

(2) A Subrecipient must establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their customer files.

(3) Subrecipients shall hold a private appeal hearing (unless otherwise required by law) by phone or in person in an accessible location within ten (10) business days after the Subrecipient received the appeal request from the applicant and must provide the applicant notice in writing of the time/location of the hearing at least seven (7) calendar days before the appeal hearing.

(4) Subrecipient shall record the hearing.

(5) The hearing shall allow time for a statement by Subrecipient staff with knowledge of the case.

(6) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(7) Subrecipient shall notify applicant of the decision in writing. The Subrecipient shall mail the notification by close of business on the third calendar day following the decision (three day turnaround).

(8) If the denial is solely based on income eligibility, the provisions described in paragraphs (2) - (7) of this subsection do not apply and the applicant may request a recertification of income eligibility based on initial documentation provided at the time of the original application. The recertification will be an analysis of the initial calculation based on the documentation received with the initial application for services and will be performed by an individual other than the person who performed the initial determination. If the recertification upholds the denial based on income eligibility documents provided at the initial application, the applicant is notified in writing.

(b) If the applicant is not satisfied, the applicant may further appeal the decision in writing to the Department within ten (10) days of notification of an adverse decision.

(c) Applicants/customers who allege that the Subrecipient has denied all or part of a service or benefit in a manner that is unjust, violates discrimination laws, or without reasonable basis in law or fact, may request a contested hearing under Tex. Gov't Code, Chapter 2001.

(d) The hearing under subsection (c) shall be conducted by the State Office of Administrative Hearings on behalf of the Department in the locality served by the Subrecipient.

(e) If the applicant/customer appeals to the Department, the funds should remain encumbered until the Department completes its decision.

§6.9. Training Funds for Conferences.

The Department may provide financial assistance to Subrecipients for training and technical activities for state sponsored, federally sponsored, and other relevant workshops and conferences. Subrecipients may use program training funds to attend conferences provided the conference agenda includes topics directly related to administering the program. Costs to attend the conference must be prorated by program for the appropriate portion. Only staff billed to the specific program, directly or indirectly, may charge any training and travel costs to the program.

§6.10. Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 6.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 6 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of community affairs programs under this subchapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, Subrecipients or Subgrantees will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide a Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's chief executive officer at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipient to provide to the Department the current contact information for the organization and the Board in accordance with §6.6 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable customer files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Customer files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, and limited English proficiency requirements.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Board Chair and the Subrecipient's and Subgrantee Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended by the Department for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five (5) calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued

to the Subrecipient. If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's timely response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipients may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title.

(C) Subrecipients may request Alternative Dispute Resolution ("ADR"). A Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(5) If Subrecipients do not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605821
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT

10 TAC §§6.201 - 6.214

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

The adopted new Chapter affects no other code, article or statute.

§6.201. Background and Definitions.

(a) In addition to this subchapter, except where noted, the rules established in Subchapter A of this chapter (relating to General Provisions) and Chapters 1 and 2 of this Part apply to the CSBG Program. The CSBG Act was amended by the "Community Services Block Grant Amendments of 1994" and the Coats Human Services Reauthorization Act of 1998. The Secretary is authorized to establish a community services block grant program and make grants available through the program to states to ameliorate the causes of poverty in communities within the states. Although Eligible Entities receive an allocation of CSBG funds, the CSBG program is not an entitlement program for eligible customers.

(b) The Texas Legislature designates the Department as the lead agency for the administration of the CSBG program pursuant to Tex. Gov't Code, §2306.092. CSBG funds are made available to Eligible Entities to carry out the purposes of the CSBG program.

(c) Definitions

(1) Community Action Plan ("CAP")--An annual plan required by the CSBG Act which describes the local Eligible Entity service delivery system, how coordination will be developed to fill identified gaps in services, how funds will be coordinated with other public and private resources, and how the local entity will use the funds to support innovative community and neighborhood based initiatives related to the grant. A comprehensive CAP developed with extensive input from the local community and an engaged tripartite board is a fundamental underpinning of an Eligible Entity's role in administering its programs to ameliorate poverty and its causes and to transition eligible Households it serves out of poverty.

(2) CSBG Act--The CSBG Act is a law passed by Congress authorizing the Community Services Block Grant. The CSBG Act was amended by the Community Services Block Grant Amendments of 1994 and the Coats Human Services Reauthorization Act of 1998 under 42 U.S.C. §§9901, *et seq.* The CSBG Act authorized establishing a community services block grant program to make grants available through the program to states to ameliorate the causes of poverty in communities within the states.

(3) Direct Customer Support--includes salaries and fringe benefits of case management staff as well as direct benefits provided to customers.

(4) Discretionary Funds--CSBG funds, excluding the 90% of the state's annual allocation that is designated for statewide allocation to CSBG Eligible Entities under §6.203 of this Subchapter and state administrative funds, maintained by the Department, at its discretion, for CSBG allowable uses as authorized by the CSBG Act.

(5) Eligible Entity--Those local organizations in existence and designated by the federal and state government to administer programs created under the Federal Economic Opportunity Act of 1964. This includes CAAs, limited-purpose agencies, and units of local government. The CSBG Act defines an eligible entity as an organization that was an eligible entity on the day before the enactment of the Coats Human Services Reauthorization Act of 1998 (October 27, 1998), or is designated by the Governor to serve a given area of the state and that has a tripartite board or other mechanism specified by the state for local governance.

(6) National Performance Indicator ("NPI")--A federally defined measure of performance within the Department's Community Affairs Contract System for measuring performance and results of Subrecipients of funds.

(7) Needs Assessment--An assessment of community needs in the areas to be served with CSBG funds.

(8) Quality Improvement Plan ("QIP")--A plan developed by a CSBG Eligible Entity to correct Deficiencies identified by the Department.

(9) Transitioned Out of Poverty ("TOP")--a Household who was CSBG eligible and as a result of the delivery of case management services attains an annual income in excess of 125% of the poverty guidelines for 90 calendar days.

(d) Use of certain terminology. In these rules and in the Department's administration of its programs, including the CSBG program, certain terminology is used that may not always align completely with the terminology employed in the CSBG Act. The term "monitoring" is used interchangeably with the CSBG Act term "review" as used in 42 USC §9915 of the CSBG Act. Similarly, the terms "findings," "concerns," and "violations" are used interchangeably with the term "deficiencies as used in 42 USC §9915 of the CSBG Act although, in a given context, they may be assigned more specific, different, or more nuanced meanings, as appropriate.

§6.202. Purpose and Goals.

The Department passes through CSBG funds to a network of Public Organizations and Private Nonprofits that are to comply with the purposes of the CSBG Act.

§6.203. Formula for Distribution of CSBG Funds.

(a) The CSBG Act requires that no less than 90% of the state's annual allocation be allocated to Eligible Entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state to the CSBG Eligible Entities. The formula is subject to adjustment from time to time when amended as part of the CSBG State Plan.

(b) The distribution formula incorporates the most current U.S. Census Bureau Decennial Census and data from the American Community Survey for information on persons not to exceed 125% of poverty. The formula is applied as follows:

(1) each Eligible Entity receives a $50,000 base award;

(2) then, the factors of poverty population, weighted at 98% and inverse population density, weighted at 2%, are applied to the state's allocation required to be distributed among Eligible Entities;

(3) if the base combined with the calculation resulting from the weighted factors in subparagraph (2) do not reach a minimum floor of $150,000, then a minimum floor of $150,000 is reserved for each of those CSBG eligible entities, resulting in a proportional reduction in other funds available for formula-based distribution;

(4) then, the formula is re-applied to the balance of the 90% funds for distributing the remaining funds to the remaining CSBG eligible entities.

(c) Following the use of the decennial Census data, then on a biennial basis, the Department will use the most recent American Community Survey five year estimate data that is available. To the extent that there are significant reductions in CSBG funds received by the Department, the Department may revise the CSBG distribution formula through a rulemaking process.

(d) In years where permitted by the federal government, Subrecipients that do not obligate more than 20% of their base allocation in a Program Year (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the allocation year for two consecutive years will have funding recaptured consistent with 42 U.S.C. §9907(a)(3). This recapture of funds does not trigger the procedures or protections of HHS Information Memorandum 116. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years. The Eligible Entity will be provided an opportunity to redistribute the funds through a competitive request for proposals to a Private Nonprofit Organization, located within the community served by the Eligible Entity. If the Eligible Entity selects this option it will be responsible for monitoring the Private Nonprofit Organization selected. If the Subrecipient does not provide them to an eligible Private Nonprofit Organization, located within the community served by the Subrecipient, the Department in accordance with CSBG IM 42 shall redistribute the funds to another Eligible Entity to be used in accordance with the CSBG and Department rules.

(e) Five percent of the Department's annual allocation of CSBG funds may be expended on activities listed in 42 U.S.C. §9907(b)(A) - (H) and further described in the annual plan or by Board approval. The Department may also opt to distribute unexpended funds described in subsection (f) of this section for these activities.

(f) Up to 5% of the State's annual allocation of CSBG funds will be used for the Department's administrative purposes consistent with state and federal law.

§6.204. Use of Funds.

CSBG funds are contractually obligated to Eligible Entities, and accessed through the Department's web-based Community Affairs contract system. Prior to executing a Contract for CSBG funds, the Department will verify that neither the entity, nor any member of the Eligible Entity's Board is federally debarred or excluded. Unless modified by Contract, the annual allocation has a beginning date of January 1 and an end date of December 31, regardless of the Eligible Entity's fiscal year. Eligible Entities may use the funds for administrative support and/or for direct services such as: education, employment, housing, health care, nutrition, transportation, linkages with other service providers, youth programs, emergency services, *i.e.,* utilities, rent, food, shelter, clothing etc.

§6.205. Limitations on Use of Funds.

(a) Construction of Facilities. CSBG funds may not be used for the purchase, construction or improvement of land, or facilities as described in (42 U.S.C. §9918(a)).

(b) The CSBG Act prohibits the use of program funds for political activity, voter registration activity, or voter registration, (for example, contacting a congressional office to advocate for a change to any law is a prohibited activity).

(c) Utility and rent deposit refunds from Vendors must be reimbursed to the Subrecipient and not the customer. Refunds must be treated as program income, and returned to the Department within ten days of receipt.

§6.206. CSBG Needs Assessment, Community Action Plan, and Strategic Plan.

(a) In accordance with the CSBG Act each Eligible Entity must submit a Community Action Plan on an annual basis. The Community Action Plan is required to be submitted to the Department by a date directed by the Department, for approval prior to execution of a Contract.

(b) Consistent with organizational standards relating to Data Analysis and Performance, the Eligible Entity must present to its governing board for review or action, at least every twelve months, an analysis of the agency's outcomes and any operational or strategic program adjustments and improvements identified as necessary; and the organization must submit its annual CSBG Information Survey data report which reflects customer demographics and organization-wide outcomes.

(c) Every three (3) years each Eligible Entity shall complete a Community Needs Assessment, upon which the annual Community Action Plan will be based. Guidance on the content and requirements of the Community Needs Assessment will be released by the Department. Information related to the Community Needs Assessment shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract. The Needs Assessment will require, among other things, that the top five needs of the service area are identified.

(d) Services to Poverty Population. Eligible Entities administering services to customers in one or more CSBG service area counties shall ensure that such services are rendered reasonably and in an equitable manner to ensure fairness among all potential applicants eligible for services. Services rendered must reflect the poverty population ratios in the service area and services should be distributed based on the proportionate representation of the poverty population within a county. A variance of greater than plus or minus 20% may constitute a Deficiency. Eligible Entities with a service area of a single county shall demonstrate marketing and outreach efforts to make available direct services to a reasonable percentage of the county's eligible population based on the most recent census or American Community Survey data, as directed by the Department. Services should also be distributed based on the proportionate representation of the poverty population within a county. Other CSBG-funded organizations shall ensure that services are rendered in accordance with requirements of the CSBG contract.

(e) The Community Action Plan shall be derived from the Needs Assessment and at a minimum include a budget, a description of the delivery of case management services, in accordance with the National Performance Indicators, and include a performance statement that describes the services, programs, activities, and planned outcomes to be delivered by the organization.

(f) The Community Action Plan must take into consideration the outcomes expected by previous Community Action Plan(s). If past outcomes were not achieved as reported in the CA contract system, or outcomes exceed the targeted goals, the Subrecipient must assess the reasons for the variance in outcomes, determine what will be done differently if continuing to include those outcome goals, and identify how any of issues or obstacles will be mitigated or addressed. An effective CAP should be constantly monitored and adjusted to optimize achievement of results consistent with CSBG Act goals.

(g) The Community Needs Assessment and the CAP both require Department approval; those that do not meet the Department's requirements as articulated in these rules or in Department actions described and contemplated in these rules will be required to be revised until they meet the Department's satisfaction. If circumstances warrant amendments to the Community Needs Assessment or the CAP, the Department must approve amendments.

(h) Hearing. In conjunction with the submission of the CAP, the Eligible Entity must submit to the Department a certification from its board that a public hearing was conducted on the proposed use of funds.

(i) Every five (5) years each Eligible Entity shall complete a strategic plan, with which the annual Community Action Plan should be consistent. Information related to the strategic plan shall be submitted to the Department on or before a date specified by the Department in the previous year's Contract.

(j) Each CSBG Subrecipient must develop a performance statement which identifies the services, programs, and activities to be administered by that organization.

§6.207. Subrecipient Requirements.

(a) Eligible Entities shall submit information regarding the planned use of funds as part of the CAP as described in §6.206 of this chapter.

(b) HHS issues terms and conditions for receipt of funds under the CSBG. Subrecipients will comply with the requirements of the terms and conditions of the CSBG award.

(c) CSBG Eligible Entities, and other CSBG organizations where applicable, are required to coordinate CSBG funds and form partnerships and other linkages with other public and private resources and coordinate and establish linkages between governmental and other social service programs to assure the effective delivery of services and avoid duplication of services.

(d) CSBG Eligible Entities will provide, on an emergency basis, the provision of supplies and services, nutritious foods, and related services as may be necessary to counteract the conditions of starvation and malnutrition among low-income individuals. The nutritional needs may be met through a referral source that has resources available to meet the immediate needs.

(e) CSBG Eligible Entities and other CSBG organizations are required to coordinate for the provision of employment and training activities through local workforce investment systems under the Workforce Innovation and Opportunity Act, as applicable.

(f) CSBG Eligible Entities are required to inform custodial parents in single-parent families that participate in programs, activities, or services about the resources available through the Texas Attorney General's Office with respect to the collection of child support payments and refer eligible parents to the Texas Attorney General's Office of Child Support Services Division.

(g) Documentation of Services. Subrecipients must maintain a record of referrals and services provided.

(h) Intake Form. To fulfill the requirements of 42 U.S.C. §9917, CSBG Subrecipients must complete and maintain an intake form that screens for income, assesses customer needs, and captures the demographic and household characteristic data required for the monthly performance and expenditure report, referenced in Subchapter A of this chapter (relating to General Provisions), for all Households receiving a community action service. CSBG Subrecipients must complete and maintain a manual or electronic intake form for all customers for each program year.

(i) Case Management.

(1) Subrecipients are required to provide integrated case management services. Subrecipients are required to identify and set goals for households they serve through the case management process. Subrecipients are required to evaluate and assess the effect their case management system has on the short-term (less than three months) and long-term (greater than three months) impact on customers, such as enabling the customer to move from poverty to self-sufficiency, to maintain stability. CSBG funds may be used for short term case management to meet immediate needs. In addition, CSBG funds may be used to provide long-term case management to persons working to transition out of poverty and achieve self-sufficiency.

(2) Subrecipients must have and maintain documentation of case management services provided.

(3) Eligible Entities are each assigned a minimum TOP goal by the Department. Eligible Entities must provide ongoing case management services for these transitioning out of poverty "TOP" households. The case management services must include the components described in subparagraphs (A) - (N) of this paragraph.

The forms or systems utilized for each component may be manual or electronic forms provided by the Department or manual or electronic forms created by the Eligible Entity that at minimum contain the same information as the Department-issued form, including but not limited to:

(A) Self-Sufficiency Customer Questionnaire to assess a customer's status in the areas of employment, job skills, education, income, housing, food, utilities, child care, child and family development, transportation, healthcare, and health insurance;

(B) Self-Sufficiency Outcomes Matrix to assess the customer's status in the self-sufficiency domains noted in subparagraph (A) of this paragraph;

(C) Case Management Screening Questions to assess the customer's willingness to participate in case management services on an ongoing basis;

(D) For customers who are willing to engage in long term case management services, a Case Management Agreement between Subrecipient and customer;

(E) Release of Information Form;

(F) Case Management Service Plan to document planned goals agreed upon by the case manager and customer along with steps and timeline to achieve goals;

(G) Case management follow-up - A system to document customer progress at completing steps and achieving goals. Case management follow-up should occur, at a minimum, every 30 days, either through a meeting, phone call or e-mail. In person meetings should occur, at a minimum, once a quarter;

(H) A record of referral resources and documentation of the results;

(I) A system to document services received and to collect and report NPI data;

(J) A system to document case closure for persons that have exited case management;

(K) A system to document income for persons that have maintained an income level above 125% of the Poverty Income Guidelines for 90 days;

(L) Customer Satisfaction Survey;

(M) A system to document and notify customers of termination of case management services; and

(N) Evaluation System. On an annual basis, Eligible Entities should determine the effectiveness of their case management services and identify strategies for improvement, including identification of reasons for customer terminations and strategies to limit their occurrence.

(j) Effective January 1, 2016, Eligible Entities shall meet the CSBG Organizational Standards as issued by HHS in Information Memorandum #138 (as revised), except that where the word bylaws is used the Department has modified the standards to read Certificate of Formation/Articles of Incorporation and bylaws; also, Eligible Entities must follow the requirements in UGMS including State of Texas Single Audit Circular. Failure to meet the CSBG Organizational Standards may result in HHS Information Memorandum #116 proceedings as described in Chapter 2 of this Title.

§6.208. Designation and Re-designation of Eligible Entities in Unserved Areas.

If any geographic area of the state ceases to be served by an Eligible Entity, the requirements of 42 U.S.C. §9909 will be followed.

§6.209. CSBG Requirements for Tripartite Board of Directors.

(a) General Board Requirements:

(1) The Coats Human Services Reauthorization Act (Public Law 105-285) addresses the CSBG program and requires that Eligible Entities administer the CSBG program through a tripartite board. The Act requires that governing boards or a governing body be involved in the development, planning, implementation, and evaluation of the programs serving the low-income sector.

(2) Federal requirements for establishing a tripartite board require board oversight responsibilities for public entities, which differ from requirements for private organizations. Where differences occur between private and public organizations, requirements for each entity have been noted in related sections of the rule.

(b) Each CSBG Eligible Entity shall comply with the provisions of this rule and if necessary, the Eligible Entity's by-laws/Certificate of Formation/Articles of Incorporation shall be amended to reflect compliance with these requirements.

§6.210. Board Structure.

(a) Eligible Entities that are Private Nonprofit Organizations shall administer the CSBG program through a tripartite board that fully participates in the development, planning, implementation, and evaluation of the program to serve low-income communities. Records must be retained for all seated board members in relation to their elections to the board for the longer of the board member's term on the Board, or the federal record retention period. Some of the members of the board shall be selected by the Private Nonprofit Organization, and others through a democratic process; the board shall be composed so as to assure that the requirements of the CSBG Act are followed and are composed as:

(1) One-third of the members of the board shall be elected public officials, holding office on the date of the selection, or their representatives. In the event that there are not enough elected public officials reasonably available and willing to serve on the board, the entity may select appointive public officials to serve on the board. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board. Appointive public officials or their representatives or alternates may be counted in meeting the 1/3 requirement.

(2) Not fewer than 1/3 of the members are persons chosen in accordance with the Eligible Entity's Board-approved written democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhood served; and each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member;

(3) The remainder are members of business, industry, labor, religious, law enforcement, education, or other major groups and interests in the community served.

(b) For a Public Organization that is an Eligible Entity, the entity shall administer the CSBG grant through an advisory board that fully participates in the development, planning, implementation and evaluation of programs that serve low-income communities or through another mechanism specified by the state and that satisfies the requirements of a tripartite board in subsection (a) above. The advisory board is the only alternative mechanism for administration the Department has specified.

(c) Eligible Entities administering the Head Start Program must comply with the Head Start Act (42 U.S.C. §9837) that requires

the governing body membership to comply with the requirements of §642(c)(1) of the Head Start Act.

(d) Selection.

(1) Public Officials:

(A) Elected public officials or appointed public officials, selected to serve on the board, shall have either general governmental responsibilities or responsibilities which require them to deal with poverty-related issues; and

(B) Permanent Representatives and Alternates. The public officials selected to serve on the board may each choose one permanent representative or designate an alternate to serve on the board.

(i) Permanent Representatives. The representative need not be a public official but shall have full authority to act for the public official at meetings of the board. Permanent representatives may hold an officer position on the board. If a permanent representative is not chosen, then an alternate may be designated by the public official selected to serve on the board. Alternates may not hold an officer position on the board.

(ii) Alternate Representatives. If the Private Nonprofit Entity or Public Organization advisory board chooses to allow alternates, the alternates for low-income representatives shall be elected at the same time and in the same manner as the board representative is elected to serve on the board. Alternates for representatives of private sector organizations may be designated to serve on the board and should be selected at the same time the board representative is selected. In the event that the board member or alternate ceases to be a member of the organization represented, he/she shall no longer be eligible to serve on the board. Alternates may not hold an officer position on the board.

(2) Low-Income Representatives:

(A) The CSBG Act and its amendments require representation of low-income individuals on boards. The CSBG statute requires that not fewer than one-third of the members shall be representatives of low-income individuals and families and that they shall be chosen in accordance with democratic selection procedures adequate to assure that these members are representative of low-income individuals and families in the neighborhoods served; and that each representative of low-income individuals and families selected to represent a specific neighborhood within a community resides in the neighborhood represented by the member.

(B) Board members representing low-income individuals and families must be selected in accordance with a democratic procedure. This procedure, as detailed in subparagraph (D) of this paragraph, may be either directly through election, public forum, or, if not possible, through a similar democratic process such as election to a position of responsibility in another significant service or community organization such as a school PTA, a faith-based organization leadership group; or an advisory board/governing council to another low-income service provider; For a Private Nonprofit Entity the democratic selection process must be detailed in the agency's Certificate of Formation/Articles of Incorporation or Bylaws, but the method detailed in the Bylaws (if so described) must not be inconsistent with any method of selection of Board members outlined in the Certificate of Formation/Articles of Incorporation; failure to comply could result in a default procedure that does not meet the CSBG requirements and potentially jeopardizes the Eligible Entity status of the organization as detailed in §6.213 of this Subchapter. For Public Organizations the democratic procedure must be written in the advisory board's procedures and approved at a board meeting.

(C) Every effort should be made by the Private Nonprofit Entity or Public Organization to assure that low-income representatives are truly representative of current residents of the geographic area to be served, including racial and ethnic composition, as determined by periodic selection or reselection by the community. "Current" should be defined by the recent or annual demographic changes as documented in the needs/community assessment. This does not preclude extended service of low-income community representatives on boards, but it does suggest that continued board participation of longer term members be revalidated and kept current through some form of democratic process.

(D) The procedure used to select the low-income representative must be documented to demonstrate that a democratic selection process was used. Among the selection processes that may be utilized, either alone or in combination, are:

(i) Selection and elections, either within neighborhoods or within the community as a whole; at a meeting or conference, to which all neighborhood residents, and especially those who are poor, are openly invited;

(ii) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards who are themselves selected by neighborhood or area residents;

(iii) Selection, on a small area basis (such as a city block); or

(iv) Selection of representatives by existing organizations whose membership is predominately composed of poor persons.

(3) Representatives of Private Groups and Interests:

(A) The Private Nonprofit or Public Organization shall select the remainder of persons to represent the private sector on the board or it may select private sector organizations from which representatives of the private sector organization would be chosen to serve on the board; and

(B) The individuals and/or organizations representing the private sector shall be selected in such a manner as to assure that the board will benefit from broad community involvement. The board composition for the private sector shall draw from officials or members of business, industry, labor, religious, law enforcement, education, school districts, representatives of education districts and other major groups and interests in the community served.

(e) Eligible Entities must have written procedures under which a low-income individual, community organization, religious organization, or representative of such may petition for adequate representation as described in (a) - (d) of this section if such persons or organizations consider there to be inadequate representation on the board of the Eligible Entity.

§6.211. Board Administrative Requirements.

(a) Compensation. Board members are not entitled to compensation for their service on the board. Reimbursement of reasonable and necessary expenses incurred by a board member in carrying out his/her duties is allowed.

(b) Conflict of Interest. No board member may participate in the selection, award, or administration of a subcontract supported by CSBG funds if:

(1) the board member;

(2) any member of his/her family related within three degrees of consanguinity, adoption, or by marriage;

(3) the board member's partner or Household member; or

(4) any organization which employs or is about to employ any of the individuals described in paragraphs (1) - (3) of this subsection, has a financial or person interest in the firm or person selected to perform a subcontract.

(c) No employee of the local CSBG Subrecipient or of the Department may serve on the board.

(d) A seated board member is permitted to be appointed to serve as an interim Executive Director for up to 180 days so long as the Department is so notified, the board member did not participate in the vote that designated them as the interim Executive Director, the board member does not vote during the period for which they serve as the interim Executive Director, and the member is not considered a member for purposes of quorum. The board member seat is not considered vacated, and is available for that board member to return.

§6.212. Board Size.

(a) Board Service Limitations for Private Nonprofit Entities and Public Organizations Subrecipient boards may establish term limits and/or procedures for the removal of board members.

(b) Vacancies/Removal of Board Members.

(1) Vacancies. In no event shall the board allow 25% or more of either the public, private, or low-income sector board positions to remain vacant for more than 90 days. CSBG Subrecipients shall report the number of board vacancies by sector in their monthly performance reports. Compliance with the CSBG Act requirements for board membership is a condition for Eligible Entities to receive CSBG funding. There is no provision for a waiver or exception to these requirements.

(2) Removal of Board Members/Private Nonprofit Entities. Public officials or their representatives, may be removed from the board either by the board or by the entity that appointed them to serve on the board. Other members of the board may be removed by the board or pursuant to any procedure provided in the private nonprofit's Certificate of Formation/Articles of Incorporation or bylaws.

(3) Removal of Board Members/Public Organizations. Public officials or their representatives may be removed from the advisory board by the Public Organization, or by the advisory board if the board is so empowered by the Public Organization. The board may petition the Public Organization to remove a board member. All other board members may be removed by the advisory board.

(4) In order to meet the 1/3 requirement for the Public Official representation detailed in §6.210 of this rule board size shall be a number divisible by 3.

§6.213. Board Responsibility.

(a) Tripartite boards have a fiduciary responsibility for the overall operation of the Eligible Entity. Members are expected to carry out their duties as any reasonably prudent person would do.

(b) At a minimum, board members are expected to:

(1) Maintain regular attendance of board and committee meetings;

(2) Develop thorough familiarity with core agency information as appropriate, such as the agency's bylaws, Certificate of Formation/Articles of Incorporation, sources of funding, agency goals and programs, federal and state CSBG statutes;

(3) Exercise careful review of materials provided to the board;

(4) Make decisions based on sufficient information;

(5) Ensure that proper fiscal systems and controls, as well as a legal compliance system, are in place;

(6) Maintain knowledge of all major actions taken by the agency; and

(7) Receive regular reports that include:

(A) Review and approval of all funding requests (including budgets);

(B) Review of reports on the organization's financial situation;

(C) Regular reports on the progress of goals specified in the performance statement or program proposal;

(D) Regular reports addressing the rate of expenditures as compared to those projected in the budget;

(E) Updated modifications to policies and procedures concerning employee's and fiscal operations; and

(F) Updated information on community conditions that affect the programs and services of the organization.

(c) Individuals that agree to participate on a tripartite governing board, accept the responsibility to assure that the agency they represent continues to:

(1) assess and respond to the causes and conditions of poverty in their community;

(2) achieve anticipated family and community outcomes; and

(3) remains administratively and fiscally sound.

(4) Excessive absenteeism of board members compromises the mission and intent of the program.

(d) Residence Requirement. All board members shall reside within the Subrecipient's CSBG service area designated by the CSBG contract unless otherwise approved in advance by the Department in writing. Board members should be selected so as to provide representation for all geographic areas within the designated service area; however, greater representation may be given on the board to areas with greater low-income population. Low-income representatives must reside in the area that they represent.

(e) Improperly Constituted Board. If the Department determines that a board of an Eligible Entity is improperly constituted, the Department shall prescribe the necessary remedial action, a timeline for implementation and possible sanctions which may include:

(1) cost reimbursement method of payment;

(2) withholding of funds;

(3) Contract suspension; or

(4) termination of funding.

§6.214. Board Meeting Requirements.

(a) Boards of Eligible Entities must meet at least once per calendar quarter and at a minimum five (5) times per year and, must give each Board member a notice of meeting five (5) calendar days in advance of the meeting.

(b) Tex. Gov't Code, Chapter 551, Texas Open Meetings Act, addresses specific requirements regarding meetings and meeting notices. Tex. Gov't Code, §551.001(3)(J), includes in the definition of a governmental body and of a nonprofit corporation that is eligible to receive funds under the federal CSBG program and that is authorized by the state to serve a geographic area of the state. All Eligible Entities

must follow the requirements of the Texas Open Meetings Act. As set forth in that law, there is the potential for individual criminal liability for violations.

(c) Tex. Gov't Code, §551.005 requires elected or appointed officials to receive training in Texas Open Government laws. The Department requires that all board members receive training in Texas Open Government laws, according to the requirements of §551.005.

(d) A copy of the attendance roster for all Board trainings shall be maintained at the Subrecipient level.

(e) The minimum number of members required to meet quorum is three unless the Subrecipient's Certification of Formation/Articles of Incorporation, Bylaws, or the Texas Open Meetings Act requires a greater number.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605822
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAMS

10 TAC §§6.301 - 6.313

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

The adopted new Chapter affects no other code, article or statute.

§6.301. Background and Definitions.

(a) The Comprehensive Energy Assistance Program ("CEAP") is funded through the Low Income Home Energy Assistance Act of 1981 (Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended). LIHEAP has been in existence since 1982. LIHEAP is a federally funded block grant program that is implemented to serve low income Households who seek assistance for their home energy bills. LIHEAP is not an entitlement program, and there are not sufficient funds to serve all eligible customers or to provide the maximum benefit for which a customer may qualify.

(b) Definitions.

(1) Extreme Weather Conditions--For winter months (November, December, January, and February), extreme weather conditions will exist when the temperature has been at least 2 degrees below the lowest winter month's temperature or below 32 degrees, for at least three days during the client's billing cycle. For summer months (June, July, August, and September), when the temperature is at least 2 degrees above the highest summer month's temperature for at least three days during the client's billing cycle. Extreme weather conditions will be based on either data for "1981-2010 Normals" temperatures recorded by National Centers for Environmental Information of the National Oceanic and Atmospheric Administration ("NOAA") and available at http://www.ncdc.noaa.gov/cdo-web/datatools/normals, or on data determined by the Subrecipient, and approved by the Department in writing. Subrecipients must maintain documentation of local temperatures and reflect their standard for extreme weather conditions in their Service Delivery Plan.

(2) Household Crisis--A bona fide Household Crisis exists when extraordinary events or situations resulting from extreme weather conditions and/or fuel supply shortages have depleted or will deplete Household financial resources and/or have created problems in meeting basic Household expenses, particularly bills for energy so as to constitute a threat to the well-being of the Households, particularly Vulnerable Population Households.

(3) Life Threatening Crisis--A life threatening crisis exists when at least one person in the applicant Household would be adversely affected without the Subrecipient's utility assistance, because there is a shut-off notice or a delivered fuel source is below a ten (10) day supply (by customer report) to the degree that, in the opinion of a reasonable person, the effect could cause loss of life. Examples of life-sustaining equipment include, but are not limited to, kidney dialysis machines, oxygen concentrators, cardiac monitors, and in some cases heating and air conditioning when ambient temperature control is prescribed by a medical professional. Documentation must not be requested about the medical condition of the applicant/customer but must state that such a device is required in the Dwelling Unit to sustain life.

§6.302. Purpose and Goals.

The purpose of CEAP is to assist low-income Households, particularly those with the lowest incomes, and High Energy Consumption Households to meet their immediate home energy needs. The LIHEAP Statute requires priority be given to those with the highest home energy needs, meaning low income Households with High Energy Consumption, a High Energy Burden and/or the presence of Vulnerable Population in the Household. CEAP services include: energy education, needs assessment, budget counseling (as it pertains to energy needs), utility payment assistance, repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

§6.303. Distribution of CEAP Funds.

(a) The Department distributes funds to Subrecipients by an allocation formula.

(b) The formula allocates funds based on the number of Low Income Households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as:

(1) County Non-Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Non-Elderly Poverty Households in the county divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor (weight of 40%)--Defined by the Department as the number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State; and

(3) County Inverse Household Population Density Factor (weight of 5%)--Defined by the Department as:

(A) The number of square miles of the county divided by the number of Poverty Households of the county (equals the Inverse Poverty Household Population Density of the county); and

(B) Inverse Poverty Household Population Density of the county divided by the sum of Inverse Household Densities.

(4) County Median Income Variance Factor (weight of 5%)--Defined by the Department as:

(A) State Median Income minus the County Median Income (equals county variance); and

(B) County Variance divided by sum of the State County Variances.

(5) County Weather Factor (weight of 10%)--Defined by the Department as:

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating degree days and county cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) All demographic factors are based on the most recent decennial U.S. Census for which Census Bureau published information is available.

(D) Total sum of paragraphs (1) - (5) of this subsection multiplied by total funds allocation equals the county's allocation of funds. The sum of the county allocations within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent balances remain in Subrecipient contracts that the Subrecipient appears to be unable to utilize or should additional funds become available, those funds will be allocated using the formula set out in this section or other method approved by the Board to ensure full utilization of funds within a limited timeframe.

(d) The Department may, in the future, undertake to reprocure the Subrecipients that comprise the network of CEAP providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.304. Deobligation and Reobligation of CEAP Funds.

(a) The Department may determine to deobligate funds from those Subrecipients who fall within the lowest 10% of Subrecipients based on combined expenditures and obligations as of the May report and whose combined expenditures and obligations are less than 80%, unless an exception is approved by the Department in writing for extenuating circumstances.

(b) The cumulative amount of deobligated funds will be allocated proportionally by formula amongst all Subrecipients that did not have any funds deobligated.

(c) Subrecipients which have had funds deobligated under option (a) above that fully expend the reduced amount of their Contract, will have access to the full amount of their following Program Year CEAP allocation. Subrecipients which have had funds deobligated under option (a) above that fail to fully expend the reduced amount of their Contract will automatically have their following Program Year CEAP allocation deobligated by the lesser of 24.99% or the proportional amount that had been deobligated in the prior year.

(d) The cumulative balance of the funds made available through subsection (c) above will be allocated proportionally by formula to the Subrecipients not having funds reduced under that subsection.

(e) In no event will deobligations that occur through any of the clauses above exceed 24.99% of the Subrecipient's Program Year CEAP formula allocation.

§6.305. Subrecipient Eligibility.

(a) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, *et seq.),* and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(b) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem. If Subrecipient fails to correct the Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipients.

(c) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(d) If it is necessary to designate a new Subrecipient to administer CEAP, the Department shall give special consideration to Eligible Entities and entities administering Weatherization in the service area.

§6.306. Service Delivery Plan.

Prior to any expenditure of funds, Subrecipients are required to submit on an annual basis a Department formatted Service Delivery Plan ("SDP"), which includes information on how they plan to implement CEAP in their service area. The Department will notify CEAP Subrecipients when the SDP template and the annual updated forms are posted on the Department's website. The SDP must establish the priority rating sheet and priority households, the alternate billing method, how customer education is being addressed, and how the Subrecipient is determining the number of payments to be made and which types of Households are qualified for a given number of payments, and identify the local standard to be used for Extreme Weather Conditions.

§6.307. Subrecipient Requirements for Customer Eligibility Criteria and Establishing Priority for Eligible Households.

(a) The customer income eligibility level is at or below 150% of the federal poverty level in effect at the time the customer makes an application for services.

(b) A complete application is required for all Households. Subrecipients shall determine customer income using the definition of income and process described in §6.4 (relating to income). Household income documentation must be collected by the Subrecipient for the purposes of determining the Household's benefit level.

(c) Social security numbers are not required for applicants for CEAP.

(d) Subrecipients must establish a written procedure to serve Households that have a Vulnerable Population Household member, Households with High Energy Burden, and Households with High Energy Consumption. High Energy Burden shall be the highest rated item in sliding scale priority determinations. The Subrecipient must maintain documentation of the use of the criteria.

(e) A Household unit cannot be served if the meter is utilized by another Household that is not a part of the application for assistance. In instances where separate structures share a meter and the applicant

is otherwise eligible for assistance, Subrecipient must provide services if:

(1) the members of the separate structures that share a meter meet the definition of a Household per §6.2 of this Chapter;

(2) the members of the separate structures that share a meter submit one application as one Household; and

(3) all persons and applicable income from each structure are counted when determining eligibility.

§6.308. Allowable Subrecipient Administrative, Program Services Costs, and Assurance 16.

(a) Funds available for Subrecipient administrative activities will be calculated by the Department as a percentage of direct services expenditures. Administrative costs shall not exceed the maximum percentage of total direct services expenditures as indicated in the Contract. All other administrative costs, exclusive of administrative costs for program services, must be paid with nonfederal funds. Allowable administrative costs for administrative activities includes costs for general administration and coordination of CEAP, and all indirect (or overhead) cost, and activities as described in paragraphs (1) - (7) of this subsection:

(1) salaries;

(2) fringe benefits;

(3) non-training travel;

(4) equipment;

(5) supplies;

(6) audit (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract); and

(7) office space (limited to percentage of the contract expenditures, excluding training/travel costs as indicated in the Contract).

(b) Program Services costs shall not exceed the maximum percentage of total direct services Expenditures as indicated in the Contract. Program Services costs are allowable when associated with providing customer direct services. Program services costs may include outreach activities and expenditures on the information technology and computerization needed for tracking or monitoring required by CEAP, and activities as described in paragraphs (1) - (8) of this subsection:

(1) direct administrative cost associated with providing the customer direct service;

(2) salaries and benefits cost for staff providing program services;

(3) supplies;

(4) equipment;

(5) travel;

(6) postage;

(7) utilities; and

(8) rental of office space.

(c) Assurance 16. Assurance 16 services encourage and enable households to reduce their home energy needs and thereby the need for energy assistance. The Department calculates Assurance 16 based on total Contract Expenditure. Subrecipients must provide an energy-related needs assessment and referrals, budget counseling, and energy conservation education to each CEAP customer. Subrecipients may provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients must maintain documentation of the assessment, referrals, counseling and education provided.

§6.309. Types of Assistance and Benefit Levels.

(a) Allowable CEAP expenditures include customer education, utility payment assistance; repair of existing heating and cooling units, and crisis-related purchase of portable heating and cooling units.

(b) Total maximum possible annual Household benefit (all allowable benefits combined) shall not exceed $5,400 during a Program Year.

(c) Benefit determinations are based on the Household's income (even if the Household is Categorically Eligible), the Household size, Vulnerable Populations in the Household, plus other priority status, and the availability of funds;

(d) Benefit determinations for the Utility Payment Assistance Component and the Household Crisis Component cannot exceed the sliding scale described in paragraphs (1) - (3) of this paragraph:

(1) Households with Incomes of 0 to 50% of Federal Poverty Guidelines may receive an amount not to exceed $1,200 per Component;

(2) Households with Incomes of 51% to 75% of Federal Poverty Guidelines may receive an amount not to exceed $1,100 per Component; and

(3) Households with Incomes of 76% to at or below 150% of Federal Poverty Guidelines may receive an amount not to exceed $1,000 per Component; and

(e) Service and Repair of existing heating and cooling units: Households may receive up to $3,000 for service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system based on requirements in §6.310, Relating to Household Crisis Component.

(f) Assistance with service and repair or purchase of portable air conditioning/evaporative coolers and heating units not to exceed $3,000 for Households that include a Vulnerable Population member, when the Household does not have an operable or non-existing heating or cooling system, regardless of weather conditions.

(g) Subrecipients shall provide only the types of assistance described in paragraphs (1) - (11) of this subsection with funds from CEAP:

(1) Payment to vendors and suppliers of fuel/utilities, goods, and other services, such as past due or current bills related to the procurement of energy for heating and cooling needs of the residence, not to include security lights and other items unrelated to energy assistance as follows:

(A) Subrecipients may make utility payments on behalf of Households based on the previous twelve (12) month's home energy consumption history, including allowances for cost inflation. If a twelve (12) month's home energy consumption history is unavailable, Subrecipient may base payments on current Program Year's bill or utilize a Department-approved alternative method. Subrecipients will note such exceptions in customer files. Benefit amounts exceeding the actual bill shall be treated as a credit for the customer with the utility company.

(B) Vulnerable Households can receive benefits to cover up to the eight highest remaining bills within the Program Year, as long as the cost does not exceed the maximum annual benefit.

(C) Households that do not contain a Vulnerable Population member can receive benefits to cover up to the six highest re-

maining bills within the Program Year as long as the cost does not exceed the maximum annual benefit.

(2) Payment to vendors--only one energy bill payment per month;

(3) Needs assessment and energy conservation tips, coordination of resources, and referrals to other programs;

(4) Payment of water bills only when such costs include expenses from operating an evaporative water cooler unit or when the water bill is an inseparable part of a utility bill and documented in the Vendor Agreement. As a part of the intake process, outreach, and coordination, the Subrecipient shall confirm that a customer owns an operational evaporative cooler and has used it to cool the dwelling within 60 days prior to application. Payment of other utility charges such as wastewater and waste removal are allowable only if these charges are an inseparable part of a utility bill and documented in the Vendor Agreement. Documentation from vendor is required. Whenever possible, Subrecipient shall negotiate with the utility providers to pay only the "home energy" (heating and cooling) portion of the bill;

(5) Energy bills already paid may not be reimbursed by the program;

(6) Payment of reconnection fees in line with the registered tariff filed with the Public Utility Commission and/or Texas Railroad Commission. Payment cannot exceed that stated tariff cost. Subrecipient shall negotiate to reduce the costs to cover the actual labor and material and to ensure that the utility does not assess a penalty for delinquency in payments;

(7) Payment of security deposits only when state law requires such a payment, or if the Public Utility Commission or Texas Railroad Commission has listed such a payment as an approved cost, and where required by law, tariff, regulation, or a deferred payment agreement includes such a payment. Subrecipients shall not pay such security deposits that the energy provider will eventually return to the customer;

(8) While rates and repair charges may vary from vendor to vendor, Subrecipient shall negotiate for the lowest possible payment. Prior to making any payments to an energy vendor a Subrecipient shall have a signed vendor agreement on file from the energy vendor receiving direct CEAP payments from the Subrecipient;

(9) Subrecipient may make payments to landlords on behalf of eligible renters who pay their utility and/or fuel bills indirectly. Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification. Subrecipient shall maintain proof of utility or fuel bill payment. Subrecipient shall ensure that amount of assistance paid on behalf of customer is deducted from customer's rent;

(10) In lieu of deposit required by an energy vendor, Subrecipient may make advance payments. The Department does not allow CEAP expenditures to pay deposits, except as noted in paragraph (7) of this subsection. Advance payments may not exceed an estimated two months' billings; and

(11) Funds for the CEAP shall not be used to weatherize dwelling units, for medicine, food, transportation assistance *(i.e.,* vehicle fuel), income assistance, or to pay for penalties or fines assessed to customers.

§6.310. Household Crisis Component.

(a) Crisis assistance can be provided under the following conditions:

(1) A Life Threatening Crisis exists, as defined in §6.301 of this Subchapter;

(2) Disconnection notice - a utility disconnection notice may constitute a Household Crisis. Assistance provided to Households based on a utility disconnection notice is limited to two (2) payments per year. Weather criterion is not required to provide assistance due to a disconnection notice. The notice of disconnection must have been provided to the Subrecipient within the effective contract term and the notice of disconnection must have been issued within no more than 60 days from receipt by the Subrecipient.; or,

(3) Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(b) Benefit Level for Crisis Assistance.

(1) Crisis assistance payments cannot exceed the minimum amount needed to resolve the crisis; *e.g.* when a shut-off notice requires a certain amount to be paid to avoid disconnection and the same notice indicates that there are balances due other than the required amount. Crisis assistance payments that are less than the amount needed to resolve the crisis may only be made when other funds or options are available to resolve the Household's remaining crisis need and are documented in the customer file.

(2) Crisis assistance for one Household cannot exceed the maximum allowable benefit level in one Program Year as defined in §6.309 of this Subchapter relating to Types of Assistance and Benefit Levels. If a Household's crisis assistance needs exceed that maximum allowable benefit, Subrecipient may pay up to the Household crisis assistance limit only if the remaining amount of Household need can be paid from other funds. If the Household's crisis requires more than the Household limit to resolve and no other funds are available, the crisis exceeds the scope of this component.

(3) Payments may not exceed Household's actual utility bill.

(4) Crisis funds, whether for utility payment assistance, disconnection notice, life threatening crisis, temporary shelter, emergency fuel deliveries, assistance related to natural disasters shall be considered part of the total maximum Household allowable assistance.

(5) Service and repair or purchase of heating and or cooling units for up to $3,000 will not be counted towards the total maximum Household allowable assistance under the utility assistance and crisis components.

(c) Where necessary to prevent undue hardships from a qualified crisis, Subrecipients may provide:

(1) Payment of utility bill(s) during the month(s) when Extreme Weather Conditions exist, as defined in §6.301 of this Subchapter.

(2) Temporary shelter not to exceed the annual Household expenditure limit for the duration of the contract period in the limited instances that supply of power to the dwelling is disrupted--causing temporary evacuation;

(3) Emergency deliveries of fuel up to 250 gallons per crisis per Household, at the prevailing price. This benefit may include coverage for tank pressure testing;

(4) For Vulnerable Population Households regardless of weather conditions, service and repair of existing heating and cooling units when the Household has an inoperable heating or cooling system when the county is experiencing Extreme Weather Conditions. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central

system. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed $3,000 during the Contract period.

(5) For Vulnerable Population Households regardless of weather conditions, service and repair or purchase of portable air conditioning/evaporative coolers and heating units (portable electric heaters are allowable only as a last resort), when the Household has an inoperable or there is a nonexistent heating or cooling system.. If any component of the central system cannot be repaired using parts, the Subrecipient can replace the component in order to repair the central system. Any service or repair of air conditioning or heating units must comply with the 2015 International Residential Code ("IRC") to ensure proper installation. Documentation of service/repair and related warranty must be included in the customer file. Costs are not to exceed $3,000 during the Contract period.

(6) When a Household's crisis meets the definition of Life Threatening Crisis and the Household has a utility disconnection notice or is low on fuel, regardless of whether the county is experiencing Extreme Weather Conditions, utility or fuel assistance can be provided.

(d) When portable heating/cooling units are purchased and/or repaired, the following requirements must be met:

(1) Purchase of more than two portable heating/cooling units per Household requires prior written approval from the Department;

(2) Purchase of portable heating/cooling units which require performance of electrical work for proper installation requires prior written approval from the Department;

(3) Replacement of central systems and combustion heating units is not an approved use of crisis funds; and

(4) Portable heating/cooling units must be Energy Star®. In cases where the type of unit is not rated by Energy Star®, or if Energy Star® units are not available due to supply shortages, Subrecipient may purchase the highest rated unit available.

(e) When natural disasters result in energy supply shortages or other energy-related emergencies, LIHEAP will allow home energy related expenditures for:

(1) Costs to temporarily shelter or house individuals in hotels, apartments or other living situations in which homes have been destroyed or damaged, *i.e.,* placing people in settings to preserve health and safety and to move them away from the crisis situation;

(2) Costs for transportation (such as cars, shuttles, buses) to move individuals away from the crisis area to shelters, when health and safety is endangered by loss of access to heating or cooling;

(3) Utility reconnection costs;

(4) Blankets, as tangible benefits to keep individuals warm;

(5) Crisis payments for utilities and utility deposits; and

(6) Purchase of fans, air conditioners and generators. The number, type, size and cost of these items may not exceed the minimum needed to resolve the crisis.

(f) Time Limits for Assistance--Subrecipients shall ensure that for customers who have already lost service or are in immediate danger of losing service, some form of assistance to resolve the crisis shall be provided within a 48-hour time limit (18 hours in life-threatening situations). The time limit commences upon completion of the application process. The application process is considered to be complete when an agency representative accepts an application and completes the eligibility process.

(g) Subrecipients must maintain written documentation in customer files showing crises resolved within appropriate timeframes. Subrecipients must maintain documentation in customer files showing that a utility bill used as evidence of a crisis was received by the Subrecipient during the effective contract term. The Department may disallow improperly documented expenditures.

§6.311. Utility Assistance Component.

(a) Subrecipients may use home energy payments to assist Low Income Households to reduce their home energy costs. Subrecipients shall combine home energy payments with energy conservation tips, participation by utilities, and coordination with other services in order to assist Low Income Households to reduce their home energy needs.

(b) Subrecipients must make payments directly to vendors and/or landlords on behalf of eligible Households.

§6.312. Payments to Subcontractors and Vendors.

(a) A bi-annual vendor agreement is required to be implemented by the Subrecipient and shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving CEAP beneficiaries. The Subrecipient must use the Department's current Vendor Agreement template, found on the CEAP Program Guidance page of the Department's website. These agreements are subject to monitoring procedures performed by the Department staff.

(b) Subrecipient shall maintain proof of payment to Subcontractors and vendors as required by Chapter 1, Subchapter D of this Title.

(c) Subrecipient shall notify each participating Household of the amount of assistance paid on its behalf. Subrecipient shall document this notification.

(d) Subrecipients shall use the vendor payment method for CEAP components. Subrecipient shall not make cash payments directly to eligible Household for any of the CEAP components.

(e) Payments to vendors for which a valid Vendor Agreement is not in place may be subject to disallowed costs unless prior written approval is obtained from the Department.

§6.313. Outreach, Accessibility, and Coordination.

(a) The Department may continue to develop interagency collaborations with other low-income program offices and energy providers to perform outreach to targeted groups.

(b) Subrecipients shall conduct outreach activities.

(c) Outreach activities may include:

(1) providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(2) distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, Social Security offices, etc.;

(3) providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(4) coordinating with other low-income services to provide CEAP information in conjunction with other programs;

(5) providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(6) providing CEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(7) working with energy vendors in identifying potential applicants;

(8) assisting applicants to gather needed documentation; and

(9) mailing information and applications.

(d) Subrecipients shall accept applications at sites that are geographically and physically accessible to all Households requesting assistance. If Subrecipient's office is not accessible, Subrecipient shall make reasonable accommodations to ensure that all Households can apply for assistance.

(e) Subrecipients shall coordinate with other social service agencies through cooperative agreements to provide services to customer Households. Cooperative agreements must clarify procedures, roles, and responsibilities of all involved entities.

(f) Subrecipients shall coordinate with other energy related programs. Specifically, Subrecipient shall make documented referrals to the local WAP Subrecipient.

(g) Subrecipients shall coordinate with local energy vendors to arrange for arrearage reduction, reasonably reduced payment schedules, or cost reductions.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605823
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER D. WEATHERIZATION ASSISTANCE PROGRAM

10 TAC §§6.401 - 6.417

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

The adopted new Chapter affects no other code, article or statute.

§6.401. Background.

The Weatherization Assistance Program was established by the Energy Conservation in Existing Buildings Act of 1976, as amended 42 U.S.C. §§6851, *et seq.* The Department funds the Weatherization Programs through the Department of Energy Weatherization Assistance Program (DOE-WAP) which is funded through the U.S. Department of Energy Weatherization Assistance Program for Low Income Persons grant and the Low Income Home Energy Assistance Program Weatherization Assistance Program ("LIHEAP-WAP") which is funded through the U.S. Department of Health and Human Services' Low-Income Home Energy Assistance Program (LIHEAP) grant.

§6.402. Purpose and Goals.

(a) DOE-WAP and LIHEAP-WAP offers awards to Private Nonprofit Organizations, and Public Organizations with targeted beneficiaries being Households with low incomes, with priority given to Vulnerable Populations, High Energy Burden, and Households with High Energy Consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals. Neither of these programs are entitlement programs and there are not sufficient funds to serve all customers that may be eligible.

(b) The programs fund the installation of weatherization materials and provide energy conservation education. The programs help control energy costs to ensure a healthy and safe living environment.

(c) Organizations administering a Department-funded weatherization program must administer both the DOE-WAP and the LIHEAP-WAP. Organizations that have one Weatherization program removed will have both programs removed.

(d) The Department shall administer and implement the DOE-WAP program in accordance with DOE rules (10 CFR Part 440), except that Categorical Eligibility will follow the eligibility reflected in LIHEAP plan. The Department shall administer and implement the LIHEAP-WAP program in accordance with a combination of LIHEAP statute (42 U.S.C. §§6861, *et seq.)* and DOE rules. LIHEAP Weatherization measures may be leveraged with DOE Weatherization measures in which case all DOE rules and requirements will apply.

§6.403. Definitions.

(a) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for certain housing and community development activities.

(b) Electric Base-Load Measure--Weatherization measures which address the energy efficiency and energy usage of lighting and appliances.

(c) Energy Audit--The energy audit software and procedures used to determine the cost effectiveness of Weatherization measures to be installed in a Dwelling Unit. The Energy Audit shall be used for any Dwelling Unit weatherized utilizing DOE funds.

(d) Energy Repairs--Weatherization-related repairs necessary to protect or complete regular Weatherization energy efficiency measures.

(e) Multifamily Dwelling Unit--A structure containing more than one Dwelling Unit.

(f) Rental Unit--A Dwelling Unit occupied by a person who pays rent for the use of the Dwelling Unit.

(g) Renter--A person who pays rent for the use of the Dwelling Unit.

(h) Reweatherization--Consistent with 10 CFR §440.18(e)(2), if a Dwelling Unit has been damaged by fire, flood, or act of God and repair of the damage to Weatherization materials is not paid for by insurance; or if a Dwelling Unit was partially weatherized under a federal program during the period September 30, 1975, through September 30, 1994, the Dwelling Unit may receive further financial assistance for Reweatherization.

(i) Shelter-- a Dwelling Unit or Units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

(j) Single Family Dwelling Unit--A structure containing no more than one Dwelling Unit.

(k) Weatherization Assistance Program Policy Advisory Council ("WAP PAC")--The WAP PAC was established by the Department in accordance with 10 CFR §440.17 to provide advisory services in regards to the DOE WAP program.

(l) Weatherization Material--The material listed in Appendix A of 10 CFR Part 440.

(m) Weatherization --A program conducted to reduce heating and cooling demand of Dwelling Units that are energy inefficient.

§6.404. Distribution of WAP Funds.

(a) Except for the reobligation of deobligated funds, the Department distributes funds to Subrecipients by an allocation formula.

(b) The allocation formula allocates funds based on the number of Low Income Households in a service area and takes into account certain special needs of individual service areas, as set forth below. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse Population Density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the Elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-Elderly Poverty Household Factor--The number of Non-Elderly Poverty Households in the County divided by the number of Non-Elderly Poverty Households in the State;

(2) County Elderly Poverty Household Factor--The number of Elderly Poverty Households in the county divided by the number of Elderly Poverty Households in the State;

(3) County Inverse Household Population Density Factor--

(A) The number of square miles of the county divided by the number of Households of the county (equals the inverse Household population density of the county); and

(B) Inverse Household Population density of the county divided by the sum of inverse Household densities.

(4) County Median Income Variance Factor--

(A) State median income minus the county median income (equals county variance); and

(B) County variance divided by sum of the State county variances;

(5) County Weather Factor--

(A) County heating degree days plus the county cooling degree days, multiplied by the poverty Households, divided by the sum of county heating and cooling degree days of counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(C) The five factors carry the following weights in the allocation formula: number of Non-Elderly Poverty Households (40%), number of poverty Households with at least one member who is 60 years of age or older (40%), Household density as an inverse ratio (5%), the median income of the county (5%), and a weather factor based on heating degree days and cooling degree days (10%). All demographic factors are based on the most current decennial U.S. Census. The formula is as follows:

(i) County Non-Elderly Poverty Household Factor (0.40) plus;

(ii) County Elderly Poverty Household Factor (0.40) plus;

(iii) County Inverse Household Population Density Factor (0.05) plus;

(iv) County Median Income Variance Factor (0.05) plus;

(v) County Weather Factor (0.10);

(vi) Total sum of clauses (i) - (v) of this subparagraph multiplied by total funds allocation equals the county's allocation of funds.

(vii) The sum of the county allocation within each Subrecipient service area equals the Subrecipient's total allocation of funds.

(c) To the extent that Contract funds have been deobligated, or should additional funds become available, those funds will be allocated using this formula or other method approved by the Department's Board to ensure full utilization of funds within a limited timeframe, including possible allocation of WAP funds to Subrecipients in varying populations from each funding source (DOE and LIHEAP), based on availability of the source.

(d) Subrecipients that do not expend more than 20% of Program Year formula allocation (excluding any additional funds that may be distributed by the Department) by the end of the first quarter of the year following the Program Year for two consecutive years will have funding recaptured. LIHEAP-WAP funding recapture will be consistent with Chapter 2105. The Subrecipient of the funds will be provided a Contract for the average percentage of funds that they expended over the last two years.

(e) The cumulative balance of the funds made available through subsections (d) above will be allocated proportionally by formula to the entities that expended 90% of the prior year's Contract by the end of the original Contract Term.

(f) To the extent federal funding awarded to Texas is limited from one of the two WAP funding sources, possible allocations of funds to Subrecipients may be made in varying proportions from each source to maximize efficient program administration.

(g) The Department may, in the future, undertake to reprocure the Subrecipients that comprise the network of Weatherization providers, in which case this allocation formula will be reassessed and, if material changes are needed, amended by rulemaking.

§6.405. Deobligation and Reobligation of Awarded Funds.

(a) At any time that a Subrecipient believes they may be at risk of meeting one of the criteria noted in subsection (l) of this section relating to criteria for deobligation of funds, notification must be provided to the Department unless excepted under subsection (m) of this section.

(b) A written 'Notification of Possible Deobligation' will be sent to the Executive Director of the Subrecipient by the Department as soon as a criterion listed in subsection (l) of this section is at risk of being met. Written notice will be sent electronically and/or by mail. The notice will include an explanation of the criteria met. A copy of the written notice will be sent to the Board of Directors of the Subrecipient by the Department seven (7) business days after the notice to the Executive Director has been released. A Notification will not be sent, and the steps in this section not triggered, if an Amendment increasing

funds by at least 20% has been provided to the Subrecipient in the prior 90 days.

(c) Within fifteen (15) days of the date of the "Notification of Possible Deobligation" referenced in subsection (b) of this section, a Mitigation Action Plan must be submitted to the Department by the Subrecipient in the format prescribed by the Department unless excepted under subsection (m) of this section.

(d) A Mitigation Action Plan is not limited to but must include:

(1) Explanation of why the identified criteria under this section occurred setting out all fully relevant facts.

(2) Explanation of how the criteria will be immediately, permanently, and adequately mitigated such that funds are expended during the Contract Period. For example, if production or expenditures appear insufficient to complete the Contract timely, the explanation would need to address how production or expenditures will be increased in the short- and long-term to restore projected full and timely execution of the contract.

(3) If applicable because of failure to produce Unit Production or Expenditure targets under the existing Production Schedule, a detailed narrative of how the Production Schedule will be adjusted, going forward, to assure achievement of sufficient, achievable Unit Production and Expenditures to ensure timely and compliant full utilization of all funds.

(4) An explanation of how the other criteria under this section will be mitigated. For example, if Unit Production criteria for a time period were not met, then the explanation will need to include how the other criteria will not be triggered.

(5) If relating to a Unit Production or expenditure criteria, a description of activities currently being undertaken including an accurate description of the number of units in progress, broken down by number of units in each of these categories: units that have been qualified, audited, assessed, contracted, inspected, and invoiced and as reflected in an updated Production Schedule.

(6) Provide any request for a reduction in Contracted Funds, reasons for the request, desired Contracted Funds and revised Production Schedule reflecting the reduced Contracted Funds.

(e) At any time after sending a Notification of Deobligation, the Department or a third-party assigned by the Department may monitor, conduct onsite visits or other assessments or engage in any other oversight of the Subrecipient that is determined appropriate by the Department under the facts and circumstances.

(f) The Department or a third-party assigned by the Department will review the Mitigation Action Plan, and where applicable, assess the Subrecipient's ability to meet the revised Production Schedule or remedy other concern.

(g) After the Department's receipt of the Mitigation Action Plan, the Department will provide the Subrecipient a written Corrective Action Notice which may include one or more of the criteria identified in this section (relating to deobligation and other mitigating actions) or other acceptable solutions or remedies.

(h) The Subrecipient has seven (7) calendar days from the date of the Corrective Action Notice to appeal the Corrective Action Notice to the Executive Director. Appeals may include:

(1) Request to retain for the full Fund Award if Partial Deobligation was indicated;

(2) Request for only partial Deobligation of the full Contracted Fund if full Deobligation was indicated in the Corrective Action Notice;

(3) Request for other lawful action consistent with the timely and full completion of the contract and Production Schedule for all Contracted Funds.

(i) In the event that an appeal is submitted to the Executive Director, the Executive Director may grant extensions or forbearance of targets included in the Production Schedule, continued operation of a Contract, authorize Deobligation, or take other lawful action that is designed to ensure the timely and full completion of the Contract for all Contracted Funds.

(j) In the event the Executive Director denies an appeal, the Subrecipient will have the opportunity to have their appeal presented at the next meeting of the Department's governing board for which the matter may be posted in accordance with law and submitted for final determination by the Board.

(k) In the event an appeal is not submitted within seven (7) calendar days from the date of the Corrective Action Notice, the Corrective Action Notice will automatically become final without need of any further action or notice by the Department, and the Department will amend/terminate the contract with the Subrecipient to effectuate the Corrective Action Notice.

(l) The criteria noted in this subsection will prompt the Deobligation process under this rule. If the criteria are met, then notification and ensuing processes discussed elsewhere in this subchapter will apply.

(1) Subrecipient fails to provide the Department with a Production Schedule for their current Contract within 30 days of receipt of the draft Contract. The Production Schedule must be signed by the Subrecipient Executive Director/Chief Executive Officer and approved by the Department in writing;

(2) By the third program reporting deadline, for DOE units, Subrecipient must report at least one unit weatherized and inspected by a certified Quality Control Inspector ("QCI");

(3) By the fifth program reporting deadline, less than 25% of total expected unit production has occurred based on the Production Schedule, or less than 20% of total Awarded Funds have been expended;

(4) By the seventh program reporting deadline, less than 50% of total expected unit production has occurred based on the Production Schedule, or less than 50% of total Awarded Funds have been expended;

(5) The Subrecipient fails to submit a required monthly report explaining any variances between the Production Schedule and actual results on Production Schedule criteria;

(m) Notification of deobligation will not be required to be sent to a Subrecipient, and a Mitigation Action Plan will not be required to be provided to the Department, if any one or more of the following are satisfied:

(1) The total cumulative unit production for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative number of units to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule for the time period applicable (i.e. cumulative through the month for which reporting has been made).

(2) The total cumulative expenditures for the Subrecipient, based on the monthly report as reported in the Community Affairs contract system, is at least 75% of the total cumulative estimated expenditures to be expended as of the end of the month according to the Subrecipient's forecast expenditures within the Production Schedule for the time period applicable *(i.e.,* cumulative through the month for which reporting has been made).

(3) The Subrecipient's monthly reports as reported in the Community Affairs contract system, for the prior two months, as required under the Contract, reflects unit production that is 80% or more of the expected unit production amount to be completed as of the end of the month according to the Subrecipient's forecast unit production within the Production Schedule.

(n) Subrecipients which have funds deobligated under this section that fully expend the reduced amount of their Contract, will have access to the full amount of their following Program Year WAP allocation. Subrecipients which have had funds deobligated under this section that fail to fully expend the reduced amount of their Contract will automatically have their following Program Year WAP allocation deobligated by the lesser of 24.99% or the proportional amount that had been deobligated in the prior year.

§6.406. Subrecipient Requirements for Establishing Priority for Eligible Households and Customer Eligibility Criteria.

(a) Subrecipients shall establish eligibility and priority criteria to increase the energy efficiency of dwellings owned or occupied by Low Income persons who are particularly vulnerable such as the Elderly, Persons with Disabilities, Families with Young Children, Households with High Energy Burden, and Households with High Energy Consumption.

(b) Subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for Multifamily Dwelling Units as referenced in §6.414 of this chapter (relating to Eligibility for Multifamily Dwelling Units).

(c) Subrecipient shall determine applicant income eligibility in compliance with §6.4 of this chapter (relating to Income Determination).

(d) Social Security numbers are not required for applicants.

§6.407. Program Requirements.

(a) Each Dwelling Unit weatherized requires completion of a written whole house assessment. Subrecipients must perform the whole house assessment then let that assessment guide whether the Dwelling Unit is best served through DOE funds using the audit or through LIHEAP WAP funds using the priority list or a combination of DOE and LIHEAP funds.

(b) Any Dwelling Unit that is weatherized using DOE funds must use the audit as a guide for installed measures. Subgrantees combining DOE funds with LIHEAP WAP funds may not mix the use of the audit and the priority list.

(c) Any Dwelling Unit that is weatherized using LIHEAP only must be completed using the priority list as a guide for installed measures. Failure to complete a written whole house assessment as indicated in §6.416 of this Subchapter prior to Weatherization may lead to unit failure during quality control inspection.

(d) If a Subrecipient's Weatherization work does not consistently meet DOE Standard Work Specifications Weatherization standards, the Department may proceed with the removal of the programs from the Subrecipient.

(e) A Subrecipient may refer a contractor to the Department for debarment consistent with Chapter 1 of this Part.

§6.408. Department of Energy Weatherization Requirements.

(a) In addition to cost principles and administrative requirements listed in §1.402 in Chapter 1 of this Part (relating to Cost Principles and Administrative Requirements), Subrecipients administering DOE programs must also adhere to 10 CFR Part 440 10 CFR Part 600 and the International Residential Code.

(b) WAP Policy Advisory Council. In accordance with Tex. Gov't Code, §2110.005 and 10 CFR §440.17, the Department shall establish the Weatherization Assistance Program Policy Advisory Council (WAP PAC), with which it will consult prior to the submission of the annual plan and award of funds to DOE.

(c) Adjusted Average Expenditure Per Dwelling Unit. Expenditures of financial assistance provided under DOE-WAP funding for the Weatherization services for labor, weatherization materials, and program support shall not exceed the DOE adjusted average expenditure limit for the current program year per Dwelling Unit as provided by DOE, and as cited in the Contract, without special agreement via an approved waiver from the Department.

(d) Electric Base Load Measures. DOE has approved the inclusion of selected Electric Base Load (EBL) measures as part of the Weatherization of eligible residential units. EBL measures must be determined cost effective with a Savings to Investment Ratio ("SIR") of one or greater by audit analysis. Refrigerators must be metered for a minimum of two (2) hours.

(e) Subrecipients may not enter into vehicle lease agreements for vehicles used in the WAP and paid for with WAP funds.

(f) Energy Audit. Subrecipients are required to complete a State of Texas approved Energy Audit to determine allowable weatherization measures prior to commencing Weatherization work.

(g) Energy Audit Procedures.

(1) SIR for the Energy Audit procedures will determine the installation of allowable Weatherization measures. The Weatherization measures must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, and installation. An Energy Audit may consist of Incidental Repairs, Energy-Saving Measures (starting with Duct Sealing and Infiltration Reduction), and Health and Safety Measures. All Energy-Saving Measures must rank with an SIR of one or greater. The total Cumulative SIR, prior to Health and Safety measures, must be a one or greater in order to weatherize the dwelling unit.

(2) The Energy Audit has not been approved for multifamily buildings containing 25 or more units. Subrecipients that propose weatherizing a building containing 25 or more units must contact the Department for assistance prior to beginning any Weatherization activity.

(3) Energy Auditors must use the established R-values for existing measures provided in the International Energy Conservation Code ("IECC") when entering data into the Energy Audit. Subrecipients must follow minimum requirements set in the State of Texas adopted International Residential Code ("IRC") or jurisdictions authorized by state law to adopt later editions.

(4) Subrecipients utilizing the Energy Audit must enter into the audit all materials and labor measures proposed to be installed.

§6.409. LIHEAP Weatherization Requirements.

(a) Allowable Expenditure per Dwelling Unit. Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, Weatherization materials, and program support shall not exceed the allowable figure as set forth in the

current Contract term, without prior written approval from the Department. The cumulative cost per unit (materials, labor and program support), shall not exceed the maximum allowable by the end of the contract term.

(b) Allowable Activities. Subrecipients are allowed to perform Weatherization measures as detailed in the priority list Exhibit to the Weatherization Contract. Measures must be performed in the order detailed in the Exhibit. Subrecipient shall include in the customer file detailed documentation to explain omitted measures.

(c) Outreach and Accessibility.

(1) Subrecipients shall conduct outreach activities, which may include but are not limited to:

(A) providing information through home visits, site visits, group meetings, or by telephone for disabled low-income persons;

(B) distributing posters/flyers and other informational materials at local and county social service agencies, offices of aging, social security offices, etc.;

(C) providing information on the program and eligibility criteria in articles in local newspapers or broadcast media announcements;

(D) coordinating with other low-income services to provide LIHEAP information in conjunction with other programs;

(E) providing information on one-to-one basis for applicants in need of translation or interpretation assistance;

(F) providing LIHEAP applications, forms, and energy education materials in English and Spanish (and other appropriate language);

(G) working with energy vendors in identifying potential applicants;

(H) assisting applicants to gather needed documentation; and

(I) mailing information and applications.

(2) Subrecipients and their field offices shall accept applications at sites that are geographically accessible to all Households requesting assistance.

(d) Priority Assessment. Subrecipients must conduct an assessment of Dwelling Units using the LIHEAP Priority List, including all required Health and Safety and energy efficiency measures.

(e) LIHEAP Subrecipient Eligibility.

(1) The Department administers the program through the existing Subrecipients that have demonstrated that they are operating the program in accordance with their Contract, the Economic Opportunity Act of 1964, the Low-Income Home Energy Assistance Act of 1981, as amended (42 U.S.C. §§8621, *et seq.),* and the Department rules. If a Subrecipient is successfully administering the program, the Department may offer to renew the Contract.

(2) If the Department determines that a Subrecipient is not administering the program satisfactorily, the Subrecipient will be required to take corrective actions to remedy the problem within the timeframe referenced in the issued monitoring report, unless it is a case of customer health or safety. If Subrecipient fails to correct the Deficiency or Finding, in order to ensure continuity of services, the Department may reassign up to 24.99% of the funds for the service area to one or more other existing Subrecipient.

(3) If the Subrecipient does not complete the corrective action within the required timeframe, the Department may conduct a solicitation for selection of an interim Subrecipient. The affected Subrecipient may request a hearing in accordance with the Tex. Gov't Code, §2105.204.

(4) If it is necessary to designate a new Subrecipient to administer LIHEAP-WAP, the Department shall give special consideration to Eligible Entities and entities administering CEAP in the service area.

§6.410. Liability Insurance and Warranty Requirement.

Subrecipient Weatherization work shall be covered by general liability insurance for an amount not less than combined total of materials, labor, support and health and safety. The Department strongly recommends Pollution Occurrence Insurance to be part of or an addendum to Subrecipients' general liability insurance coverage. Subrecipients must ensure that each Subcontractor performing Weatherization activities maintain adequate insurance coverage for all units to be weatherized. Weatherization contractors must provide a one-year warranty on their work for parts and labor; the period for the warranty coverage shall begin at the completion of installation. If Subrecipient relinquishes its Weatherization program, Weatherization work completed within 12 months of the date of surrender of the program, must be covered by general liability insurance or contractor warranty. Public Organizations that have self insurance complying with Tex. Gov't Code Chapter 2259 covering weatherization work, may, but are not required to, purchase additional coverage.

§6.411. Customer Education.

Subrecipients shall provide customer education to each WAP customer on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage Household energy use, and strategies to promote energy savings. Subrecipients are encouraged to use oral, written, and visual educational materials. These activities are allowable program support Expenditures.

§6.412. Mold-Like Substances.

(a) If the Subrecipient's energy auditor discovers the presence of mold-like substances that the Weatherization Subcontractor cannot adequately address, then the Dwelling Unit shall be referred to the Texas Department of State Health Services or its successor agency.

(b) The Subrecipient shall provide the applicant written notification that their home cannot, at this time, be weatherized and why. They should also be informed of which agency they should contact to report the presence of mold-like substances. The applicant should be advised that when the issue is resolved they may reapply for Weatherization. Should the applicant reapply for Weatherization, the Subrecipient must obtain written documentation of resolution of the issue from the applicant prior to proceeding with any Weatherization work.

(c) If the energy auditor determines that the mold-like substance is treatable and covers less than the 25 contiguous square feet limit allowed to be addressed by the Texas Department of State Health Services' guidelines, the Subrecipient shall notify the applicant of the existence of the mold-like substance and potential health hazards, the proposed action to eliminate the mold-like substance, and that no guarantee is offered that the mold-like substance will be eliminated and that the mold-like substance may return. The auditor must obtain written approval from the applicant to proceed with the Weatherization work and maintain the documentation in the customer file.

(d) Subrecipients shall be responsible for providing mold training to their employees and Weatherization Subcontractors.

§6.413. Lead Safe Practices.

Subrecipients are required to document that its Weatherization staff as well as Subcontractors follow the Environmental Protection Agency's Renovation, Repair and Painting Program (RRP) Final Rule, 40 CFR Part 745 and HUD's Lead Based Housing Rule, 24 CFR Part 35, as applicable.

§6.414. Eligibility for Multifamily Dwelling Units.

(a) A Subrecipient may weatherize a building containing Rental Units if not less than 66% (50% for duplexes and four-unit buildings) of the Dwelling Units in the building are occupied by Low Income Households, or will become occupied by Low-income Households within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building.

(b) In order to Weatherize large multifamily buildings containing twenty-five or more Dwelling Units or those with shared central heating *(i.e.,* boilers) and/or shared cooling plants *(i.e.,* cooling towers that use water as the coolant) regardless of the number of Dwelling Units, Subrecipients shall submit in writing a request for approval from the Department. When necessary, the Department will seek approval from DOE. Approvals from DOE must be received prior to the installation of any Weatherization measures in this type of structure.

(c) In order to weatherize Shelters, Subrecipients shall submit a written request for approval from the Department. Written approval from the Department must be received prior to the installation of any Weatherization measures.

(d) If roof repair is to be considered as part of repair cost under the Weatherization process, the expenses must be shared equally by all eligible Dwelling Units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground floor units must be allocated a portion of the roof cost as well as the eligible top floor units. All Weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(d)(9) and (15) and Appendix A-Standards for Weatherization Materials.

(e) WAP Subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. The multifamily master file must include, at a minimum, the forms listed in paragraphs (1) - (6) of this subsection: (Forms available on the Departments website.)

(1) Multifamily Pre-Project Checklist Form;

(2) Multifamily Post-Project Checklist Form;

(3) Permission to Perform an Assessment for Multifamily Project Form;

(4) Landlord Agreement Form;

(5) Landlord Financial Participation Form; and

(6) Significant Data Required in all Multifamily Projects.

(f) For DOE WAP, if a public housing, assisted multi-family or Low Income Housing Tax Credit (LIHTC) building is identified by the HUD and included on a list published by DOE, that building meets certain income eligibility and may meet other WAP requirements without the need for further evaluation or verification. A public housing, assisted housing, and LIHTC building that does not appear on the list using HUD records may still qualify for the WAP. Income eligibility can be made on an individual basis by the Subrecipient based on information supplied by property owners and the Households in accordance with subsection (a) of this section.

(g) For any Dwelling Unit that is weatherized using funding provided under DOE WAP, all Weatherization measures installed must be entered into an approved Energy Audit. Weatherization measures installed shall begin with repair items, then continue with those measures having the greatest SIR and proceed in descending order to the measures with the smallest SIR or until the maximum allowable per unit expenditures are achieved, and finishing with Health and Safety measures.

§6.415. Health and Safety and Unit Deferral.

(a) Health and Safety expenditures with DOE WAP may not exceed 20% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the contract term. Health and Safety expenditures with LIHEAP WAP may not exceed 30% of total expenditures for Materials, Labor, Program Support, and Health and Safety at the end of the Contract term.

(b) Subrecipients shall provide Weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from Weatherization work.

(c) Subrecipients must test for high carbon monoxide ("CO") levels and bring CO levels to acceptable levels before Weatherization work can start. The Department has defined maximum acceptable CO readings as follows:

(1) if flame impingement exists in cook stove burners, must do clean and tune;

(2) 200 parts per million for vented combustion appliance;

(3) 200 parts per million for cook stove ovens;

(4) Primary Unvented Space Heater must be removed;

(5) if ambient CO level is 35 ppm, must shut off appliance, open a window and notify customer; and

(6) if ambient CO level is 70 ppm, open a window, notify customer and request customer exit the unit, must cease work, turn off gas and notify gas provider.

(d) A Dwelling Unit shall not be weatherized when there is a potentially harmful situation that may adversely affect the occupants or the Subrecipient's Weatherization crew and staff, or when a Dwelling Unit is found to have structural concerns that render the Dwelling Unit unable to benefit from Weatherization. The Subrecipient must declare their intent to defer Weatherization on an eligible unit on the assessment form. The assessment form should include the customer's name and address, dates of the assessment, and the date on which the customer was informed of the issue in writing. The written notice to the customer must include a clear description of the problem, conditions under which Weatherization could continue, the responsibility of all parties involved, and any rights or options the customer has. A copy of the notice must be given to the customer, and a signed copy placed in the customer application file. Only after the issue has been corrected to the satisfaction of the Subrecipient shall Weatherization work begin.

(e) If structural concerns or health and safety issues identified (which would be exacerbated by any Weatherization work performed) on an individual unit cannot be abated within program rules or within the allowable WAP limits, the Dwelling Unit exceeds the scope of this program.

§6.416. Whole House Assessment.

(a) Subrecipients must conduct a whole house assessment on all eligible units. Whole house assessments must be used to determine whether the Priority List or an Energy Audit is most appropriate for the

unit. Whole house assessments must include but are not limited to the items described in paragraphs (1) - (15) of this subsection:

(1) Wall--Condition, type, orientation, and existing R-values;

(2) Windows--Condition, type material, glazing type, leakiness, and solar screens;

(3) Doors--Condition, type;

(4) Attic--Type, condition, existing R-values, and ventilation;

(5) Foundation--Condition, existing R-values, and floor height above ground level;

(6) Heating System--For all systems: unit type, fuel source (primary or secondary), thermostat, and output; for combustion systems only: vented or unvented efficiency, CO-levels, complete fuel gas analysis, gas leaks, and combustion venting;

(7) Cooling System--Unit type, condition, area cooled, size in BTU rating, Seasonal Energy Efficiency Rating (SEER) or Energy Efficiency Rating ("EER"), manufacture date, and thermostat;

(8) Duct System--Condition, existing insulation level, evaluation of registers, duct infiltration, return air register size, and condition of plenum joints;

(9) Water Heater--For all water heaters: condition, fuel type, energy factor, recovery efficiency, input and output ratings, size, existing insulation levels, existing pipe insulation; for combustion water heaters only: carbon monoxide levels, draft test, complete fuel gas analysis;

(10) Refrigerator--Condition, manufacturer, manufacture date and make, model, and consumption reading (minutes and meter reading); customer refusal must be documented;

(11) Lighting System--Quantity, watts, and estimated hours used per day;

(12) Water Savers--Number of showerheads, estimated gallons per minute and estimated minutes used per day;

(13) Health and Safety--For all units: smoke detectors, wiring, minimum air exchange, moisture problems, lead paint present, asbestos siding present, condition of chimney, plumbing problems, mold; for units with combustion appliances: unvented space heaters, carbon monoxide levels on all combustion appliances, carbon monoxide detectors;

(14) Air Infiltration--To be determined from Blower Door testing; areas requiring air sealing will be noted;

(15) Repairs--Measures needed to preserve or protect installed Weatherization measures may include lumber, shingles, flashing, siding, masonry supplies, minor window repair, gutters, downspouts, paint, stains, sealants, and underpinning.

(b) If using the Energy Audit, all allowable Weatherization measures needed must be entered. Measures will be performed in order of highest SIR to lowest depending on funds available. If using the Priority List, included Weatherization measures must be addressed in the order they appear on the list, or an explanation for excluding a measure must be provided.

§6.417. Blower Door Standards.

Subrecipients are required to use the blower door/duct blower data form adopted by the Department and available on the Department's website (http://www.tdhca.state.tx.us/community-affairs/wap/index.htm).

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605824
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

CHAPTER 7. HOMELESSNESS PROGRAMS

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 7, Homelessness Programs including Subchapter A, General Provisions, 10 TAC §§7.1 - 7.14; Subchapter B, Homeless Housing and Services Program (HHSP), 10 TAC §§7.1001 - 7.1005; and Subchapter C, Emergency Solution Grant (ESG), 10 TAC §§7.2001 - 7.2006. The new sections are being adopted with changes made in response to public comment to the proposed text as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6892).

REASONED JUSTIFICATION: The purpose of the new Chapter 7 is to effectuate a reorganization of the rules that govern the homelessness programs so that the rules addressing homelessness that currently are provided for in Chapter 5, relating to the Community Affairs Programs, will now be addressed in a new and separately proposed chapter.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATION: The Department accepted public comment between September 9, 2016, and October 10, 2016. Comment was received from one organization, Texas Council on Family Violence ("TCFV"), concerning this new rule.

1. §7.8, Client Eligibility

COMMENT SUMMARY: TCFV suggests that the rule as proposed, which requires that clients assisted with rental assistance for greater than six months apply for other longer-term rental assistance options (such as Section 8), may pose a serious safety concern for some survivors of family violence as they flee an abusive relationship. TCFV also notes that the Family Violence Prevention and Services Act ("FVPSA") requires that all services offered via these funding streams be voluntary and thus this requirement may represent a violation of the spirit of those federal regulations. They also strongly recommended that should the Department opt to keep this requirement, the rule offer an exemption to this requirement for those victims whose safety would be jeopardized.

STAFF RESPONSE: TCFV has identified a concern; however, the Department does not agree in removing the requirement entirely because, for those households not experiencing a safety risk, it is beneficial to prompt clients to apply for longer-term rental assistance options. Therefore, as suggested by TCFV, an exemption is being added to the rule. While TCFV requested the exemption be "for those victims whose safety would be jeopardized" that may not be an objective enough criteria for Sub-

recipients to determine and/or document when the exemption is applicable. Alternative exemption language is being provided as noted below.

(d) If Subrecipients provide medium-term rental assistance for a period greater than six months, prior to clients being assisted with the seventh month of rental assistance, the client (with the exception of client households who are protected or have a household member that is an affiliated individual covered under the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"), or are client households being served with programs funded by the Family Violence Prevention and Services Act ("FVPSA")) must have applied for rental assistance benefits, such as Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program and been placed on one or more waiting lists, if waiting lists are open. If waiting lists are closed, the Subrecipient will check every six (6) months for opening of the lists for programs in the city (HHSP) or county (ESG).

2. §7.1002, HHSP, Distribution of Funds and Formula

COMMENT SUMMARY: TCFV suggests adding a focus on victims of family violence into the distribution formula for HHSP funds. TCFV notes that in Texas more than 1 out of every 5 homeless households report being a victim of family violence and that 39% of all victims of family violence seeking services at a family violence program are denied solely due to lack of space. Given that housing continues as a significant unmet need for victims, TCFV requests that the HHSP formula prioritize this population.

STAFF RESPONSE: The Department agrees that survivors of domestic violence are a significant population within the homeless population. However, to make an adjustment to the formula would require further rulemaking so that other interested parties would have the opportunity to provide comment on the idea of adding a new population into the calculation. In the past, feedback on the formula for HHSP was garnered through a survey of the eight statutory subrecipients. The Department commits that it will release another such survey in the ensuing months to garner input from subrecipients and stakeholders on possible formula modifications; if such results support a subsequent rulemaking the Department will proceed accordingly. No changes to §7.1002 are being made at this time.

The Board approved the adoption of the new rules on November 10, 2016.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§7.1 - 7.14

STATUTORY AUTHORITY. The new rules are adopted pursuant to the authority of Tex. Gov't Code §2306.053(b)(4), which authorizes the Department to adopt rules.

The adopted new rules affects no other code, article, or statute.

§7.1. Purpose and Goals.

(a) The rules established herein for Chapter 7 "Homelessness Programs" Subchapter A "General Provisions" applies to all homelessness programs, unless otherwise noted. Additional program specific requirements are contained within each program subchapter.

(b) The homelessness programs administered by the Texas Department of Housing and Community Affairs ("the Department") support the Department's statutorily assigned mission to address the problem of homelessness among Texans.

(c) The Department accomplishes this mission by acting as a conduit for state and federal grant funds for homelessness programs. Ensuring program compliance with the state and federal laws that govern these programs is another important part of the Department's mission. Oversight and program mandates ensure state and federal resources are expended in an efficient and effective manner.

§7.2. Definitions.

(a) To ensure a clear understanding of the terminology used in the context of the Department's Homelessness programs, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this Chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--An entity related to an Applicant that controls by contract or by operation of law the Applicant or has the power to control the Applicant or a third entity that controls, or has the power to control both the Applicant and the entity. Examples include but are not limited to entities submitting under a common application, or instrumentalities of a unit of government. This term also includes any entity that is required to be reported as a component entity under Generally Accepted Accounting Standards, is required to be part of the same Single Audit as the Applicant, is reported on the same IRS Form 990, or is using the same federally approved indirect cost rate.

(2) At-risk of homelessness--As defined by 24 CFR §576.2.

(3) Break in Service--Situation in which a program participant had received homeless services or housing assistance, currently receives no homelessness services or housing assistance, and is in need of homelessness services or housing assistance.

(4) Child--Household member not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations ("CFR")--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Concern--A policy, practice or procedure that has not yet resulted in a Finding but if not changed will or may result in Findings, Deficiencies, and/or disallowed costs.

(7) Continuum of Care ("CoC")--The Continuum of Care Program is a HUD funded program designed to assist sheltered and unsheltered homeless people by providing the housing and/or services needed to help individuals move into transitional and permanent housing, with the goal of long-term stability. HUD requires representatives of relevant organizations to form a CoC to serve a specific geographic area; the Department and the CoCs are required by HUD to coordinate relating to the ESG Program as set forth in 24 CFR §576.400. This does not include any funds given from the State to a specific CoC.

(8) Contract--The executed written agreement between the Department and a Subrecipient performing a program activity that describes performance requirements and responsibilities assigned by the document; for which the first day of the Contract term is the point at which programs funds may be considered by a Subrecipient for Expenditure, unless otherwise directed in writing by the Department.

(9) Contracted Funds--The gross amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(10) Cost Reimbursement--A Contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only af-

ter the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(11) Declaration of Income Statement ("DIS")--A Department-approved form used only when it is not possible for an applicant to obtain third party or firsthand verification of income.

(12) Department of Housing and Urban Development ("HUD")--Federal department that provides funding for ESG.

(13) Elderly Person--

(A) For HHSP, a person who is 60 years of age or older; and

(B) For ESG, a person who is 62 years of age or older.

(14) Emergency Solutions Grants ("ESG")--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(15) Expenditure--An amount of money spent.

(16) Finding--A Subrecipient's material failure to comply with rules, regulations, the terms of the Contract or to provide services under each program to meet appropriate standards, goals, and other requirements established by the Department or funding source (including performance objectives). A Finding impacts the organization's ability to achieve the goals of the program and jeopardizes continued operations of the Subrecipient. Findings include the identification of an action or failure to act that results in disallowed costs.

(17) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2. For HHSP, a homeless individual may have right of occupancy because of a signed lease, but still qualify as homeless if his or her primary nighttime residence is an emergency shelter or place not meant for human habitation.

(18) Homeless Housing and Services Program ("HHSP")--The state-funded program established under §2306.2585 Tex. Gov't Code.

(19) Homeless Management Information System ("HMIS")--Information system designated by the CoC to comply with the HUD's data collection, management, and reporting standards and used to collect client-level data and data on the provision of housing and services to homeless individuals and families and persons at-risk of homelessness.

(20) HMIS-Comparable Database--Database established and operated by a victim service provider or legal service provider that is comparable to HMIS and collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data.

(21) Household--Any individual or group of individuals who are living together.

(22) Low Income--Income in relation to Household size and that governs income eligibility for a program:

(A) For ESG, below 30% of the Median Family Income ("MFI") as defined by HUD's 30% Income Limits for All Areas for persons receiving prevention assistance or as amended by HUD; and

(B) For all other homelessness programs, below 30% of the MFI as defined by HUD for the ESG Program, although persons may be up to, but not exceed, 50% of ESG income limits, at recertification for rapid re-housing or homelessness prevention. Households in which any member is a recipient of SSI or a Means Tested Veterans Program are categorically income eligible.

(23) Land Use Restriction Agreement ("LURA")--An agreement, regardless of its title, between the Department and the shelter property owner which is a binding covenant upon the shelter property owner and successors in interest, that, when recorded, encumbers the property with respect to the requirements of the programs for which it receives funds.

(24) Means-Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(25) Observation--A notable policy, practice or procedure observed though the course of monitoring.

(26) Occupancy limits--Three adults per bedroom, as defined by Tex. Prop Code §92.010. Exceptions to the occupancy limits are requirements by a state or federal fair housing law to allow a higher occupancy rate; or if an adult is seeking temporary sanctuary from family violence, as defined by Section 71.004, Family Code, for a period that does not exceed one month.

(27) Office of Management and Budget ("OMB")--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(28) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(29) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(30) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in 29 U.S.C. §701 or has a disability under 42 U.S.C. §12131-12134;

(B) disabled as defined in 42 U.S.C. 1382(a)(3)(A), 42 U.S.C. §423, or in 42 U.S.C. 15001; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(31) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. This does not include a governmental organization such as a public housing authority or a housing finance agency.

(32) Program Year--Contracts with funds from a specific federal allocation (ESG) or state biennium (HHSP).

(33) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(34) Single Audit--The audit required by OMB, 2 CFR Part 200, Subpart F, or Tex. Gov't Code, Chapter 738, Uniform Grant and Contract Management, as reflected in an audit report.

(35) State--The State of Texas or the Department, as indicated by context.

(36) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(37) Subgrant--An award of financial assistance in the form of money made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(38) Subgrantee--The legal entity to which a Subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(39) Subrecipient--An organization that receives federal or states funds passed through the Department to operate the ESG and/or HHSP programs.

(40) Supplemental Security Income ("SSI")--A means tested program run by the Social Security Administration.

(41) Texas Administrative Code ("TAC")--A compilation of all state agency rules in Texas.

(42) Uniform Grant Management Standards ("UGMS")--The standardized set of financial management procedures and definitions established by Tex. Gov't Code Chapter 783 to promote the efficient use of public funds, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. This includes all Public Organizations, Housing Authorities, and Housing Finance Agencies. In addition, Tex. Gov't Code Chapter 2105, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(43) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(44) United States Code ("U.S.C.")--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(45) United States Department of Veteran Affairs ("VA")--Federal department that serves America's Veterans and their families with medical care, benefits, social support, and lasting memorials promoting the health, welfare, and dignity of all Veterans in recognition of their service.

§7.3. Land Use Restriction Requirement.

(a) A Subrecipient that rehabilitates or convert a building(s) for use as a shelter will be required to enter into a land use restriction agreement from three to ten years depending on the type of renovation or conversion and value of the building. The minimum use periods established in 24 CFR §576.102(c) are applicable to both the ESG emergency shelter component and to HHSP.

(b) For HHSP only, §2306.185 Tex. Gov't Code requires certain multifamily developments to have a thirty-year land use restriction agreement. A Subrecipient that intends to expend funds that require the use of a LURA, must let the Department know at least 60 days prior to the end of the Contract.

§7.4. Subrecipient Contract.

(a) Subject to prior Board approval, the Department and a Subrecipient shall enter into and execute a Contract for the disbursement of program funds. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver authorized modifications and/or amendments to the Contract, as allowed by state and federal laws and rules.

(b) The governing body of the Subrecipient must pass a resolution authorizing its Executive Director or his/her designee to have signature authority to enter into Contracts, sign amendments, and review and approve reports. All Contract actions including extensions, amendments or revisions must be ratified by the governing body at the next regularly scheduled meeting. Minutes relating to this resolution must be on file at the Subrecipient level.

(c) Within 45 days following the conclusion of a Contract issued by the Department, the Subrecipient shall provide a final expenditure and final performance report regarding funds expended under the terms of the Contract.

(d) A performance statement and budget are attachments to the Contract between the Subrecipient and the Department. Execution of the Contract enables the Subrecipient to access funds through the Department's Community Affairs contract system.

(e) Amendments and Extensions to Contracts.

(1) Amendments and extension requests must be submitted in writing by the Subrecipient and except for amendments that only move funds within budget categories, amendments will not be granted if any of the following circumstances exist:

(A) if the award for the Contract was competitively awarded and the amendment would materially change the scope of the Contract performance;

(B) if the funds associated with the Contract will reach their federal expiration date within 45 days of the request;

(C) if the Subrecipient is delinquent in the submission of their Single Audit or their Single Audit Certification form required by §1.403 in Chapter 1 of this Part;

(D) if the Subrecipient owes the Department disallowed amounts in excess of $1,000 and a Department-approved repayment plan is not in place or has been violated;

(E) for amendments adding funds (not applicable to amendments for extending time), if the Department has cited the Subrecipient for violations within §7.14 of this Subchapter (related to Compliance Monitoring) and the corrective action period has expired without correction of the issue or a satisfactory plan for correction of the issue;

(F) the Contract has expired; or

(G) a member of the Subrecipient's board has been debarred and has not been removed.

(2) Within 30 calendar days of a Subrecipient's request for a Contract amendment or extension request the request will be processed or denied in writing. If denied, the applicable reason from this subsection (e) will be cited. The Subrecipient may appeal the decision to the Executive Director consistent with Chapter 1, §1.7, of this Title.

(f) For ESG:

(1) The Department reserves the right to deobligate funds and redistribute funds for failure to abide by terms of the Contract.

(2) The Department reserves the right to negotiate the final grant amounts and local match with Subrecipients.

§7.5. Performance and Expenditure Benchmarks.

(a) The Department may incorporate performance and expenditure benchmarks into each Contract.

(b) Performance and expenditure benchmarks will be based on budgets, timelines, and performance measures approved by the Department in writing before the start of the Contract period.

(c) Benchmarks may be adjusted for good cause by the Department. If Subrecipient does not concur with adjustments to benchmarks, they may Appeal this decision consistent with §1.7 of this Title, relating to Staff Appeals.

(d) Department staff will periodically review Subrecipients' progress in meeting benchmarks. If a Subrecipient is out of compliance with performance or expenditure benchmarks, the Department may deobligate all or a portion of any remaining funds under the Contract, in accordance with the notice provisions in the Contract.

§7.6. Subrecipient Reporting.

(a) Subrecipients must submit a monthly performance and expenditure report through the Community Affairs Contract System not later than the fifteenth (15th) day of each month following the reported month of the contract period. Reports are required even if a fund reimbursement or advance is not being requested.

(b) For monthly performance reports, the data to be reported will be indicated in the Contract. Clients that are assisted continuously as one Contract ends and a new Contract begins in the same program will count as new clients for the new Contract. However, the start of a new Contract does not require new eligibility determination or documentation for clients, except as required by federal rule for ESG.

(c) Subrecipient shall reconcile their Expenditures with their performance at least monthly before seeking a request for funds for the following month. If the Subrecipient is unable to reconcile on a month-to-month basis, the Subrecipient must provide at the request of the Department, a written explanation for the variance and take appropriate measures to reconcile the subsequent month. It is the responsibility of a Subrecipient to ensure that it has documented the compliant use of all funds provided prior to receipt of additional funds, or if this cannot be done to address the repayment of such funds.

(d) Within 45 days from the end of the Contract, the Subrecipient must provide a final expenditure and final performance report regarding all funds expended under the terms of the contract.

(e) Failure of a Subrecipient to provide a final expenditure and final performance report of funds expended under the terms of the contract may be sufficient reason for the Department to deny any future Contract to the Subrecipient until resolved to the satisfaction of the Department.

§7.7. Subrecipient Data Collection.

Subrecipients must ensure that data on all persons served and all activities assisted under ESG or HHSP is entered into the applicable HMIS or HMIS comparable database for domestic violence or legal service providers in order to integrate data from all homeless assistance and homelessness prevention projects in a COC. The data to be collected will be indicated in the Contract.

§7.8. Client Eligibility.

(a) For ESG, clients must satisfy the eligibility requirements as defined in 24 CFR Parts 91 and 576, by meeting the appropriate definition of homelessness, at-risk of homelessness in 24 CFR 576.2, including applicable income requirements. Subrecipients must document eligibility of the clients.

(b) For HHSP, clients must satisfy the eligibility requirements by meeting the appropriate definition of homelessness or at-risk of homelessness in this chapter including applicable income requirements. Subrecipients must document eligibility of the clients; however, in accordance with subsection (a) of §7.9 of this Subchapter, documentation of income for certain individuals is not required to be collected.

(c) If a client has a break in service, the Subrecipient must document eligibility before providing services. For HHSP, if the client is currently receiving homeless services or housing assistance through ESG, the Subrecipient would not need to document further their eligibility for HHSP.

(d) If Subrecipients provide medium-term rental assistance for a period greater than six months, prior to clients being assisted with the seventh month of rental assistance, the client (with the exception of client households who are protected or have a household member that is an affiliated individual covered under the Violence Against Women Reauthorization Act of 2013 ("VAWA 2013"), or are client households being served with programs funded by the Family Violence Prevention and Services Act ("FVPSA")) must have applied for rental assistance benefits, such as Section 8 Housing Choice Voucher, HUD Section 811 Supportive Housing for Persons with Disabilities, HUD Section 811 Project Rental Assistance Demonstration, or HUD Section 202 Supportive Housing for the Elderly Program and been placed on one or more waiting lists, if waiting lists are open. If waiting lists are closed, the Subrecipient will check every six (6) months for opening of the lists for programs in the city (HHSP) or county (ESG).

§7.9. Income Determination.

(a) For ESG and HHSP, Subrecipients must use the income determination method outlined in 24 CFR §5.609, must use the list of income included in HUD Handbook 4350, and must exclude from income those items listed in HUD's Updated List of Federally Mandated Exclusions from Income, as may be amended from time to time. For HHSP, Households who were income eligible under a prior definition, retain that eligibility until recertification. For HHSP, there is no procedural requirement to verify income for persons living on the street (or other places not fit for human habitation), living in emergency shelter, entering transitional housing (housing that is limited to 24 months or less of occupancy), or starting rapid re-housing.

(b) If a federal or state requirement provides an updated definition of income or method for calculating income, the Department will provide written notice to Subrecipients about the implementation date for the new requirements.

(c) If proof of income is unobtainable, the applicant must complete and sign a DIS.

(d) For ESG recertification must be done in accordance with 24 CFR §576.401. For HHSP, recertification must be done for rapid re-housing and homelessness prevention the lesser of every twelve months or in accordance with the entity's written policies.

§7.10. Subrecipient Contact Information.

(a) In accordance with §1.22 of this Title (relating to Providing Contact Information to the Department), Subrecipients will notify the Department and provide contact information for key management staff (Executive Director, Chief Financial Officer, Program Director/Manager/Coordinator or any other person, regardless of title, generally performing such duties) new hires within 30 days of such occurrence.

(b) Subrecipients will notify the Department and provide contact information for subgrants or subcontracts, where clients must apply for services or for HMIS/HMIS-comparable databases, within 30 days of, subgrants or Subcontracts. Contact information for the organizations with which the Subrecipients partner, subgrant or subcontract must be provided to the Department, including: organization name,

phone number, e-mail address, and service area for any program services provided.

(c) The Department will rely solely on the contact information supplied by the Subrecipient in the Department's web-based Community Affairs System. It is the Subrecipient's sole responsibility to ensure such information is current, accurate, and complete. Correspondence sent to the email or physical address shown in CA Contract System will be deemed delivered to the Subrecipient. Correspondence from the Department may be directly uploaded to the Subrecipient's CA contract account using a secure electronic document attachment system. Once uploaded, notification of the attachment will be sent electronically to the email address listed in the CA contract system. The Department is not required to send a paper copy and if it does so it does as a voluntary and non-precedential courtesy only.

§7.11. Records Retention.

Record retention for rehabilitation/conversion/construction of emergency shelters or multifamily housing developments must be retained until the greater of ten (10) years after the date that the funds are first obligated for rehabilitation/conversion/construction, or the expiration of the LURA.

§7.12. Contract Closeout.

When a Contract is terminated, or voluntarily relinquished, the procedures described in this subsection will be implemented. The terminology of a "terminated" Subrecipient below is intended to include the Subrecipient that is voluntarily terminating their Contract, but does not include Contracts naturally reaching the end of their Contract Term.

(1) The Department will issue a termination letter to the Subrecipient no less than 30 calendar days prior to terminating the Contract. The Department may determine to take one of the following actions: suspend funds immediately or allow a temporary transfer to another Subrecipient; or provide instructions to the Subrecipient to prepare a proposed budget and written plan of action that supports the closeout of the Contract. The plan must identify the name and current job titles of staff that will perform the closeout and an estimated dollar amount to be incurred. The plan must identify the CPA or firm which will perform the Single Audit. The Department will issue an official termination date to allow all parties to calculate deadlines which are based on such date.

(2) No later than 30 calendar days after the Contract is terminated, the Subrecipient will take a physical inventory of client files, including case management files.

(3) The terminated Subrecipient will have 30 calendar days from the date of the physical inventory to make available to the Department all current client files. Current and active case management files also must be inventoried.

(4) Within 60 calendar days following the Subrecipient due date for preparing and boxing client files, Department staff will retrieve the client files.

(5) The terminated Subrecipient will prepare and submit no later than 30 calendar days from the date the Department retrieves the client files, a final report containing a full accounting of all funds expended under the Contract.

(6) A final monthly expenditure report and a final monthly performance report for all remaining expenditures incurred during the closeout period must be received by the Department no later than 45 calendar days from the date the Department determines that the closeout of the program and the period of transition are complete.

(7) The Subrecipient will submit to the Department no later than 45 calendar days after the termination of the Contract, an inventory of the non-expendable personal property acquired in whole or in part with funds received under the Contract.

(8) The Department may require transfer of Equipment title to the Department or to any other entity receiving funds under the program in question. The Department will make arrangements to remove Equipment covered by this paragraph within 90 calendar days following termination of the Contract.

(9) A current year Single Audit must be performed for all entities that have exceeded the federal expenditure threshold under 2 CFR Part 200, Subpart F or the State expenditure threshold under UGMS, as applicable. The Department will allow a proportionate share of program funds to pay for accrued audit costs, when an audit is required, for a Single Audit that covers the date up to the closeout of the contract. To be reimbursed for a Single Audit, the terminated Subrecipient must have a binding contract with a CPA firm on or before the termination date of the Contract. The actual costs of the Single Audit and accrued audit costs including support documentation must be submitted to the Department no later than 45 calendar days from the date the Department determines the closeout is complete.

(10) Subrecipients shall submit within 45 calendar days after the date of the closeout process all financial, performance, and other applicable reports to the Department. The Department may approve extensions when requested by the Subrecipient. However, unless the Department authorizes an extension, the Subrecipient must abide by the 45 day requirement of submitting all referenced reports and documentation to the Department.

§7.13. Inclusive Marketing.

(a) The purpose of this section is to highlight certain policies and/or procedures that are required
to have written documentation. Other items that are required for written standards are included in the federal or state rules.

(b) Participant selection criteria:

(1) Selection criteria will be applied in a manner consistent with all applicable laws, including the Texas and Federal Fair Housing Acts, program guidelines, and the Department's rules.

(2) If the local COC has adopted priority for certain Homeless subpopulations or a specific funding source has a statutory or regulatory preference, then those subpopulations may be given priority by the Subrecipient. Such priority must be listed in the participant selection criteria.

(3) Notifications on denial, non-renewal, or termination of Assistance must:

(A) State that a Person with a Disability may request a reasonable accommodation in relation to such notice.

(B) Include any appeal rights the participant may have in regards to such notice.

(C) Inform program participants in any denial, non-renewal or termination notice, include information on rights they may have under VAWA (for ESG only, in accordance with the Violence Against Women Reauthorization Act of 2013 ("VAWA") protections). Subrecipients may not deny admission on the basis that the applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking.

(c) Other policies and procedures:

(1) Affirmative Fair Housing Marketing Plan. Subrecipients providing project-based rental assistance must have an Affirmative Fair Housing Marketing Plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants who

are considered "least likely" to know about or apply for housing based on an evaluation of market area data. Subrecipients must comply with HUD's Affirmative Fair Housing Marketing and the Age Discrimination Act of 1975.

(2) Language Access Plan. Subrecipients that interact with program participants or clients must create a Language Access Plan for Limited English Proficiency ("LEP") Requirements. Consistent with Title VI and Executive Order 13166, Subrecipients are also required to take reasonable steps to ensure meaningful access to programs and activities for LEP persons.

(3) Affirmative Outreach. If it is unlikely that outreach will reach persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for those facilities and services, the Subrecipient must establish policies and procedures that target outreach to those persons. The Subrecipients must take appropriate steps to ensure effective communication with persons with disabilities including, but not limited to, adopting procedures that will make available to interested persons information concerning the location of assistance, services, and facilities that are accessible to persons with disabilities. Subrecipients must make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis.

(4) Reasonable Accommodation. The Subrecipient must comply with state and federal fair housing and antidiscrimination laws. Subrecipients' policies and procedures must address reasonable accommodation, including, but not limited to, consideration of reasonable accommodations requested to complete the application process. See Chapter 1 Subchapter B for more information.

§7.14. Compliance Monitoring.

(a) Purpose and Overview

(1) This section provides the procedures that will be followed for monitoring for compliance with the programs in 10 TAC Chapter 7.

(2) Any entity administering any or all of the programs detailed in 10 TAC Chapter 7 is a Subrecipient. A Subrecipient may also administer other programs, including programs administered by other state or federal agencies and privately funded programs. If the Subrecipient has Contracts for other programs through the Department, including but not limited to the HOME Partnerships Program, the Neighborhood Stabilization Program, or the Texas Housing Trust Fund, the Department may, but is not required to and does not commit to, coordinate monitoring of those programs with monitoring of the programs under this Chapter.

(3) Any entity administering any or all of the programs provided for in subsection (a) of this section as part of a Memorandum of Understanding ("MOU"), contract, or other legal agreement with a Subrecipient is a Subgrantee.

(b) Frequency of Reviews, Notification and Information Collection.

(1) In general, the Subrecipient or Subgrantee will be scheduled for monitoring based on state or federal monitoring requirements and/or a risk assessment. Factors to be included in the risk assessment include but are not limited to: the number of Contracts administered by the Subrecipient or Subgrantee, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a Single Audit, complaints received by the Department, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Subrecipients or Subgrantees will have an onsite review and which may have a desk review.

(2) The Department will provide the Subrecipient or Subgrantee with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Subrecipient and Subgrantee by email to the Subrecipient's and Subgrantee's chief executive officer at the email address most recently provided to the Department by the Subrecipient or Subgrantee. In general, a 30 day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits. It is the responsibility of the Subrecipients to provide to the Department the current contact information for the organization and the Board in accordance with §7.10 of this chapter (relating to Subrecipient Contact Information) and §1.22 of this title (relating to Providing Contact Information to the Department).

(3) Upon request, Subrecipients or Subgrantees must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review. Typically, these records may include (but are not limited to):

(A) Minutes of the governing board and any committees thereof, together with all supporting materials;

(B) Copies of all internal operating procedures or other documents governing the Subrecipient's operations;

(C) The Subrecipient's Board approved operating budget and reports on execution of that budget;

(D) The Subrecipient's strategic plan or comparable document if applicable and any reports on the achievement of that plan;

(E) Correspondence to or from any independent auditor;

(F) Contracts with any third parties for goods or services and files documenting compliance with any applicable procurement and property disposition requirements;

(G) All general ledgers and other records of financial operations (including copies of checks and other supporting documents);

(H) Applicable client files with all required documentation;

(I) Applicable human resources records;

(J) Monitoring reports from other funding entities;

(K) Client files regarding complaints, appeals and termination of services; and

(L) Documentation to substantiate compliance with any other applicable state or federal requirements including, but not limited to, the Davis-Bacon Act, HUD requirements for environmental clearance, Lead Based Paint, the Personal Responsibility and Work Opportunity Act, HUD LEP requirements, and requirements imposed by Section 3 of the Housing and Urban Development Act of 1968.

(c) Post Monitoring Procedures.

(1) In general, within 30 calendar days of the last day of the monitoring visit, a written monitoring report will be prepared for the Subrecipient describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed and sent through the U.S. Postal Service to the Board Chair and the Subrecipient's and Subgrantee Executive Director. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department

with the staff of cognizant agencies overseeing federal funding. Certain types of suspected or observed improper conduct may trigger requirements to make reports to other oversight authorities, state and federal, including but not limited to the State Auditor's Office and applicable Inspectors General.

(2) Subrecipient Response. If there are any findings of noncompliance requiring corrective action, the Subrecipient will be provided 30 calendar days, from the date of the email, to respond which may be extended for good cause. In order to receive an extension, the Subrecipient must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that justifies the extension. The Department will approve or deny the extension request within five calendar days.

(3) Monitoring Close Out. Within 45 calendar days after the end of the corrective action period, a close out letter will be issued to the Subrecipient with notice to Subgrantees (if applicable). If the Subrecipient supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Subrecipient's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as corrected. In some circumstances, the Subrecipient may be unable to secure documentation to correct a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not corrected but close the issue with no further action required. If the Subrecipient's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue.

(4) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Subrecipient or Subgrantee in noncompliance, and the Subrecipient disagrees, the Subrecipient may request or initiate review of the matter using the following options, where applicable:

(A) If the issue is related to a program requirement or prohibition of a federal program, the Subrecipient may contact the applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Subrecipient.

(B) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, the Subrecipient may request to submit an appeal to the Executive Director consistent with §1.7, Staff Appeals Process, in Chapter 1 of this Title.

(C) The Subrecipient may request Alternative Dispute Resolution ("ADR"). The Subrecipient may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(5) If the Subrecipients does not respond to a monitoring letter or fail to provide acceptable evidence of compliance, the matter will be handled through the procedures described in Chapter 2 of this Title, relating to Enforcement.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605810

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.1001 - 7.1005

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

The adopted new Chapter affects no other code, article or statute.

§7.1001. Purpose and Use of Funds.

(a) In accordance with Tex. Gov't Code §2306.2585, HHSP provides funding to cities with populations in excess of 285,500 to develop programs to prevent and eliminate Homelessness.

(b) HHSP eligible activities are:

(1) Administrative costs associated with HHSP, including client tracking using HMIS or a HMIS-comparable database;

(2) Case management for households experiencing or at-risk of Homelessness to assess, arrange, coordinate and monitor the delivery of services;

(3) Construction/Conversion/Rehabilitation of buildings (including administrative facilities) to serve persons experiencing Homelessness or at-risk of Homelessness, or house persons experiencing homelessness;

(4) Essential services for Households experiencing or at-risk of Homelessness to find or maintain housing stability;

(5) Homelessness Prevention to provide financial assistance to individuals or families at risk of Homelessness;

(6) Homelessness Assistance to provide financial assistance provided to individuals or families experiencing Homelessness;

(7) Operation of emergency shelters or administrative facilities to serve persons experiencing or at-risk of Homelessness; and

(8) Other local programs to assists individuals or families experiencing Homelessness or at-risk of Homelessness if approved by the Department in writing in advance of the Expenditure.

§7.1002. Distribution of Funds and Formula.

(a) Pursuant to the authority of Tex. Gov't Code §2306.2585, HHSP is available to any municipality in Texas with a population of 285,500 or more. HHSP funds will be biennially awarded upon appropriation from the legislature and will be made available to any of those municipalities subject to the requirements of this rule and be distributed in accordance with the formula set forth in subsection (b) of this section (relating to Formula). The Department may redistribute formula-funded allocations among the eligible municipalities if a Subrecipient is unable to expend the funds within 120 days of the close of the biennium.

(b) Formula. Any funds made available for HHSP shall be distributed in accordance with a formula that is calculated each biennium that takes into account:

(1) population of the municipality, as determined by the most recent available 1 Year American Community Survey ("ACS") data;

(2) poverty, defined as the number of persons in the municipality's population with incomes at or below the poverty threshold, as determined by the most recent available 1 Year ACS data;

(3) veteran populations, defined as that percentage of the municipality's population composed of veterans, as determined by the most recent available 1 Year ACS data;

(4) population of Persons with Disabilities, defined as that percentage of the municipality's population composed of Persons with Disabilities, as determined by the most recent available 1 Year ACS data; and

(5) population of Homeless persons, defined as that percentage of the municipality's population comprised of Homeless persons, as determined by the most recent publically available Point-In-Time Counts submitted to HUD by the CoCs in Texas.

(c) The factors enumerated shall be used to calculate distribution percentages for each municipal area based on the following formula:

(1) 20 percent weight for population;

(2) 25 percent weight for poverty populations;

(3) 25 percent weight for veteran populations;

(4) 5 percent weight for population of Persons with Disabilities; and

(5) 25 percent weight for the Homeless population.

§7.1003. General Homeless Housing and Services Program ("HHSP") Requirements.

(a) Each municipality or entity that had in effect as of January 1, 2012, a Contract with the Department to administer HHSP funds will remain a designated entity to receive HHSP funds in its municipality, whether that entity is the municipality itself or another entity. The Department may add to or change those entities at its discretion based on consideration of the factors enumerated in paragraphs (1) - (4) of this subsection. If the Department proposes to add or change any such entity(ies) it will publish notice thereof on its website at least twenty (20) days prior to such addition or change. If the proposal is to add an entity, the notice will include any proposed sharing of funding with other HHSP providers in the affected municipality:

(1) whether an entity to be removed and replaced was compliantly and efficiently administering its contract;

(2) the specific plans of any new entity to build facilities to provide shelter or services to homeless populations, and/or to provide any specific programs to serve the homeless;

(3) the capacity of any new entity to deliver its planned activities; and

(4) any public comment and comment by state or local elected officials.

(b) The final decision to add or change entities will be approved by the Department's Governing Board (the "Board").

(c) A municipality or entity receiving HHSP funds is subject to the Department's Previous Participation Rule, found in §1.302 of this title. In addition to the considerations of the Previous Participation Rule, a municipality or entity receiving HHSP funds may not:

(1) have failed to fully expend funds with respect to any previous HHSP award(s) except as approved by the Executive Director of the Department after review of unique circumstances and reported to the Board; or

(2) be in breach, after notice and a reasonable opportunity to cure, of any contract with the Department.

(d) A municipality or entity receiving HHSP funds (Subrecipient) must enter into a Contract with the Department governing the use of such funds. If the source of funds for HHSP is funding under another specific Department program, such as the Housing Trust Fund, as authorized by Tex. Gov't Code, §2306.2585(c), the Contract will incorporate any requirements applicable to such funding source.

§7.1004. Eligible Costs.

(a) Administrative costs includes staff costs related to staff performing management, reporting and accounting of HHSP activities, including costs associated with HMIS or an HMIS-comparable databases.

(b) Case management costs include staff salaries related to assessing, arranging, coordinating and monitoring the delivery of services related to obtaining or retaining housing, including, but not limited to, determining client eligibility, counseling, coordinating services and obtaining mainstream benefits, monitoring clients' progress, providing safety planning for persons under VAWA, developing a housing and service plan, and entry into HMIS or an HMIS-comparable database.

(c) Construction/Conversion and Rehabilitation costs include:

(1) Pre-Development such as: environmental review, site-control, survey, appraisal, architectural fees, and legal fees.

(2) Development such as: land acquisition costs, site work including infrastructure for service utilities, walkways, curbs, gutters, construction to meet uniform building codes, construction to meet international energy conservation code, accessibility features to site and building, local rehabilitation standards, essential improvements, energy-related improvements, abatement of lead-based paint hazards, barrier removal/construction costs for accessibility features for persons with disabilities, non-luxury general property improvements, site improvements and utility connections, lot clearing and site preparations.

(3) Essential services costs are associated with finding maintaining stable housing, and include, but are not be limited to, out-patient medical services, child care, education services, legal services, mental health services, local transportation assistance, drug and alcohol rehabilitation, and job training.

(4) Homelessness Prevention costs include rental and utility assistance (including reasonable deposits), motel stay costs, and local transportation assistance. An individual or family at-risk of homelessness may receive Homelessness Prevention, Case Management, and Essential Services. Staff time entering information into HMIS or HMIS-comparable database is also an eligible Homelessness Prevention cost.

(5) Homelessness Assistance costs include costs associated with rapidly re-housing the individual or family with rental and utility assistance (including reasonable deposits) or motel stay costs, and local transportation assistance. An individual or family experiencing homelessness may receive Homelessness Assistance, Case Management, and Essential Services. Staff time entering information into HMIS or HMIS-comparable database is also an eligible Homelessness Assistance cost.

(6) Operation costs include rent, utilities, supplies and equipment purchases, food pantry supplies, and other related costs

necessary to operate an emergency shelter or administrative offices serving individuals experiencing or at-risk of homelessness.

§7.1005. Shelter and Housing Standards.

(a) Minimum standards for emergency shelters. Any building for which HHSP funds are used for conversion, major rehabilitation, or other renovation, must meet state or local government safety and sanitation standards, as applicable, and the following minimum safety and sanitation standards. Any emergency shelter that receives assistance for shelter operations must also meet the following minimum safety and sanitation standards.

(1) Structure and materials. The shelter building must be structurally sound to protect residents from the elements and not pose any threat to health and safety of the residents. Any renovation (including major rehabilitation and conversion) carried out with HHSP assistance must use Energy Star and WaterSense products and appliances.

(2) Access. The shelter must be accessible in accordance with Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8; the Fair Housing Act (42 U.S.C. 3601 *et seq.)* as outlined in 10 TAC Chapter 1, Subchapter B, and implementing regulations at 24 CFR Part 100; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131 *et seq.)* and 28 CFR Part 35; where applicable.

(3) Space and security. Except where the shelter is intended for day use only, the shelter must provide each program participant in the shelter with an acceptable place to sleep and adequate space and security for themselves and their belongings.

(4) Interior air quality. Each room or space within the shelter must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(5) Water supply. The shelter's water supply must be free of contamination.

(6) Sanitary facilities. Each program participant in the shelter must have access to sanitary facilities that are in proper operating condition and are adequate for personal cleanliness and the disposal of human waste.

(7) Thermal environment. The shelter must have any necessary heating/cooling facilities in proper operating condition.

(8) Illumination and electricity. The shelter must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the shelter.

(9) Food preparation. Food preparation areas, if any, must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(10) Sanitary conditions. The shelter must be maintained in a sanitary condition.

(11) Fire safety. There must be at least one working smoke detector in each occupied unit of the shelter. Where possible, smoke detectors must be located near sleeping areas. The fire alarm system must be designed for hearing-impaired residents. All public areas of the shelter must have at least one working smoke detector. There must also be a second means of exiting the building in the event of fire or other emergency.

(b) Minimum standards for housing for occupancy. HHSP funds cannot help a program participant remain in or move into housing that does not meet the minimum habitability standards below. HHSP funds may assist a program participant in returning the home to the minimum habitability standard in cases where the program participant is the responsible party for ensuring such conditions. In order to ensure continuity of housing, the Subrecipient may provide assistance to a program participant pending a completed housing inspection within 30 days of the assistance being provided. This allowance applies whether the program participant is the responsible party for ensuring such standards or another party is the responsible party. Should the housing not meet the minimum habitability standards 30 days after the initial assistance, no further assistance may be provided to maintain the program participant in that housing.

(1) Structure and materials. The structures must be structurally sound to protect residents from the elements and not pose any threat to the health and safety of the residents.

(2) Space and security. Each resident must be provided adequate space and security for themselves and their belongings. Each resident must be provided an acceptable place to sleep.

(3) Interior air quality. Each room or space must have a natural or mechanical means of ventilation. The interior air must be free of pollutants at a level that might threaten or harm the health of residents.

(4) Water supply. The water supply must be free from contamination.

(5) Sanitary facilities. Residents must have access to sufficient sanitary facilities that are in proper operating condition, are private, and are adequate for personal cleanliness and the disposal of human waste.

(6) Thermal environment. The housing must have any necessary heating/cooling facilities in proper operating condition.

(7) Illumination and electricity. The structure must have adequate natural or artificial illumination to permit normal indoor activities and support health and safety. There must be sufficient electrical sources to permit the safe use of electrical appliances in the structure.

(8) Food preparation. All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a safe and sanitary manner.

(9) Sanitary conditions. The housing must be maintained in a sanitary condition.

(10) Fire safety.

(A) There must be a second means of exiting the building in the event of fire or other emergency.

(B) Each unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each occupied level of the unit. Smoke detectors must be located, to the extent practicable, in a hallway adjacent to a bedroom. If the unit is occupied by hearing impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(C) The public areas of all housing must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(c) Shelters and housing for occupancy. Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing reg-

ulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

(d) Lead-based paint remediation and disclosure. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, subparts A, B, H, J, K, M, and R apply to all shelters and all housing units occupied by program participants.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605811
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

SUBCHAPTER C. EMERGENCY SOLUTION GRANT (ESG)

10 TAC §§7.2001 - 7.2006

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

The adopted new Chapter affects no other code, article or statute.

§7.2001. Background.

(a) ESG funds are federal funds awarded to the State of Texas by HUD and administered by the Department.

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

(c) ESG Subrecipients shall comply with the regulations applicable to the ESG Program as set forth in this subchapter and as set forth in 24 CFR Part 91 and 24 CFR Part 576 (the "Federal Regulations"). ESG Subrecipients must also follow all other applicable federal and state statutes and the regulations established in this chapter, as amended or supplemented.

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

§7.2002. Purpose and Use of Funds.

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

(b) ESG eligible activities are:

(1) the rehabilitation or conversion of buildings for use as emergency shelter for the Homeless;

(2) the payment of certain expenses related to operating emergency shelters;

(3) essential services related to emergency shelters and street outreach for the Homeless;

(4) homelessness prevention and rapid re-housing assistance;

(5) HMIS activities, including HMIS-comparable database activities; and

(6) administrative costs.

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

(d) The Department's Governing Board, Executive Director, or his/her designee may limit activities in a given funding cycle or by contract.

§7.2003. Availability, Distribution, and Redistribution of ESG Funds.

(a) The Department will post on its website the distribution plan for ESG funds.

(b) Redistribution/Reallocation of Additional Grant Funds and Unexpended Funds. The Department, as determined by the Board, will determine the most equitable and beneficial use of any additional grant year appropriation, unexpended or deobligated program funds. In determining the distribution of funds, the Department may consider program performance, expenditure rates of eligible applicants or Subrecipients, or other factors deemed appropriate by the Department.

§7.2004. Eligible Applicants.

(a) Eligible Subrecipients are Units of General Local Government; those Private Nonprofit Organization(s) that are secular or religious organizations as described in §501(c) of the Internal Revenue Code of 1986, are exempt from taxation under Subtitle A of the Code, have an accounting system and a voluntary board, and practice non-discrimination in the provision of assistance; and organizations as described in a Notice of Funding Availability or other Board-approved funding mechanism.

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

(c) Subrecipients that subcontract or subgrant any portion of their award to another entity must, consistent with 2 CFR Part 200, monitor those subcontracts based on a risk assessment. Subrecipients must be prepared to provide documentation of the risk assessment performed and the policies and procedures used in monitoring those subcontracts.

§7.2005. Program Income.

(a) Program income is gross income received by the Subrecipient, its Affiliates, or Subgrantees directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. Program income received and expended during the contract period will count toward meeting the Subrecipients' matching requirements, provided the costs are eligible ESG costs that supplement the ESG program.

(b) Utility and security deposit refunds from vendors should be treated as program income.

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

(d) Program income received by the Subrecipient, its Affiliates, or its Subgrantees during the two (2) years following the end of the contract period must be returned to the Department. Program income must be returned to the Department within ten (10) working days of receipt.

(e) Program income received after the two (2) year period described in subsection (d) of this section has expired, can be retained.

§7.2006. Environmental Clearance.

All ESG activities require some level of environmental clearance. Subrecipients must obtain the correct level of environmental clearance prior to commencing associated choice-limiting activities. Activities for which the Subrecipient did not properly complete the Department's environmental review process before commencing a choice-limiting activity are ineligible and funds will not be reimbursed or will be required to be repaid.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605812
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-1762

♦ ♦ ♦

CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §10.614

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. The rule is adopted for repeal in connection with the adoption of new §10.614, concerning Utility Allowances, which was published concurrently in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6902).

REASONED JUSTIFICATION. The repeal of §10.614 concerning Utility Allowance will allow for the concurrent adoption of new §10.614 concerning Utility Allowance.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from September 9, 2016, through October 10, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The repeal affects no other code, article, or statute.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605807
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-2330

♦ ♦ ♦

10 TAC §10.614

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, §10.614, concerning Utility Allowances. This new section is being adopted concurrently with the repeal of existing §10.614, concerning Utility Allowances with the changes made, in response to public comment, to the proposed text comment as published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6902).

REASONED JUSTIFICATION. The purpose of the new rule is to align requirements related to Utility Allowances with changes made to Federal Regulations for both the HOME and Housing Tax Credit Program. The new rule also prescribed a process through which Utility Allowances will be reviewed for an Application of funding. Please note that a non-substantive technical correction is included herein changing the term "Direct Loan" to "Multifamily Direct Loan" or "MFDL".

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS.

The public comment period was from September 9, 2016, through October 10, 2016. Comments were received from (1) Bobby Bowling, (2) Jen Joyce Brewerton on behalf of the Texas Affiliation of Affordable Housing Providers ("TAAHP"), and (3) Robert Somers on behalf of 2rw Consultants, Inc.

The comment received from Mr. Bowling was to express support of the proposed rule as presented in the Board meeting of August 25, 2016. Specifically, the commenter supports §10.614(k) relating to the formalized process of utility allowances in Applications of funding. In general, all three commenter's commended the Department's efforts in drafting a rule that is compliant but practical.

COMMENT SUMMARY: §10.614(c)(d) related to the Energy Consumption Model- Commenter (3) stated that the term "available historical data" should be better defined because "available" could be interpreted in several different ways. The commenter "... suggest that "available" be defined as data that has already been collected and is in a property manager/owner possession" and the "...'available' data includes only data collected at the building site in question." The commenter references cost associated with obtaining such data and "...suggests that having to pay for the information means it is no longer 'available'."

The Commenter also questions how such data would be incorporated into the Energy Consumption Model and "...suggests that available historical data be used solely as a point for comparison, rather than attempting to incorporate that data into the Energy Consumption Model itself. When comparing the model to available historical data, we suggest that obvious discrepancies be noted and explained, but the historical data should not outweigh the modeled consumption data because actual consumption data can incorporate improper and inefficient utility usage, as well as weather abnormalities, meaning that data can misrepresent what an appropriate allowance would be."

STAFF RESPONSE: Staff does not recommend any changes to this section of the rule based on these comments. The Treasury Department updated Treasury Regulation §1.42-10 on March 3, 2016. With that update, the Energy Consumption Model was amended by removing the requirement to incorporate the building's consumption data and instead requiring the use of "available historical data". During the comment period for Treasury regulation §1.42-10 comment was provided to Treasury that data may be inaccessible and an additional paperwork burden. Treasury did not make any amendments to the regulation based on these comments and the Department will not recommend changes, either. The Owner has four (4) other available methods for calculating the utility allowance, with this being the only method that requires the hiring of a professional.

The Department disagrees that data not in the possession of the building owner is unavailable. Further, incurring a fee to obtain historical data does not warrant such data be considered "unavailable" and, if there is a cost to obtain such data, the Owner would be expected to incur this expense as it is a cost associated with calculating the utility allowance under this method. The Department also disagrees that the only available data that should be considered is data collected at the building site in question. The final regulation did not enact further parameters related to "available historical data"; as such, the Department did not see a benefit to further restricting any of the factors required to be considered. There may be other ample historical data that would be appropriate to include and, that the determination of relevant historical data should be a decision best made by the Mechanical Engineer performing the model, as what would be considered appropriate historical factors could vary from site to site.

Treasury Regulation§1.42-10(b)(ii)(E) The energy consumption model must, at a minimum, take into account specific factors including, but not limited to, unit size, building orientation, design and materials, mechanical systems, appliances, characteristics of the building location, and available historical data. Because the final regulation includes a requirement to include "available historical data", restricting the use of the data only as point for comparison, is in conflict with the federal regulation.

COMMENT SUMMARY: §10.614(d)(a) relates to HTC Buildings with units under a Multifamily Direct Loan ("MFDL") when the Department is not the awarding jurisdiction of the Multifamily Direct Loan ("MFDL") funds. Commenter (2) suggested the following language be added to the end of the subsection: In the event that the awarding jurisdiction has not established a utility allowance for the program, and is unresponsive to an owner request to establish a utility allowance for the Direct Loan program, or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with paragraph (3) subsection (d) of this section.

STAFF RESPONSE: This section of the rule currently reads: If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. It is a federal requirement of any awarding jurisdiction to comply with §92.252 of the HOME Final Rule and establish a utility allowance for their properties; the Department is unaware of any jurisdiction that has failed to do so or is unwilling to work with the Owner in establishing an allowance. Further, the language in the rule is broad enough to address what the owner of the building is to do if they have HTCs and MFDL funds from another jurisdiction and are not able to obtain an allowance. However, the Department recognizes a benefit to addressing what utility allowance should be used in the unlikely event that the owner is unable to obtain a utility allowance from a jurisdiction that provided MFDL funds. Therefore, the following has been added: In such an event, provided that sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in (3)(A), (B), (C), or (D) of subsection (c) related to Methods to calculate and establish its utility allowance.

STATUTORY AUTHORITY. The new section is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

The new section affects no other code, article, or statute.

§10.614. Utility Allowances.

(a) Purpose. The purpose of this section is to provide the guidelines for calculating a Utility Allowance under the Department's multifamily programs. The Department will cite noncompliance and/or not approve a Utility Allowance if it is not calculated in accordance with this section. Owners are required to comply with the provisions of this section, as well as, any existing federal or state program guidance.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. Other capitalized terms used in this section herein have the meaning assigned in Chapters 1, 2 and 10 of this part.

(1) Building Type. The HUD Office of Public and Indian Housing ("PIH") characterizes building and unit configurations for HUD programs. The Department will defer to the guidance provided by HUD found at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11608.pdf (or successor Uniform Resource Locator ("URL")) when making determinations regarding the appropriate building type(s) at a Development.

(2) Power to Choose. The Public Utility Commission of Texas database of retail electric providers in the areas of the state where the sale of electricity is open to retail competition http://www.powertochoose.org/ (or successor URL). In areas of the state where electric service is deregulated, the Department will verify the availability of residential service directly with the Utility Provider. If the Utility Provider is not listed as a provider of residential service in the Development's ZIP code for an area that is deregulated, the request will not be approved

(3) Component Charges. The actual cost associated with the billing of a residential utility. Each Utility Provider may publish specific utility service information in varying formats depending on the service area. Such costs include, but are not limited to:

(A) Rate(s). The cost for the actual unit of measure for the utility (e.g. cost per kilowatt hour for electricity);

(B) Fees. The cost associated with a residential utility that is incurred regardless of the amount of the utility the household consumes (e.g. Customer Charge); and,

(C) Taxes. Taxes for electricity and gas are regulated by the Texas Comptroller of Public Accounts and can be found http://comptroller.texas.gov/ (or successor URL). Local Utility Providers have control of the tax structure related to water, sewer and trash. To identify if taxes are imposed for these utilities, obtain documentation directly from the Utility Provider.

(4) Multifamily Direct Loan ("MFDL")- Funds provided through the HOME Program ("HOME"), Neighborhood Stabilization Program ("NSP"), National Housing Trust Fund ("NHTF"), Repayments from the Tax Credit Assistance Program ("TCAP RF"), or other program available through the Department, local political subdivision, or administrating agency for multifamily development that require a Utility Allowance. MFDLs may also include deferred forgivable loans or other similar direct funding, regardless if it is required to be repaid. Housing Tax Credits, Tax Exempt Bonds and Project Based Vouchers are not MFDLs.

(5) Renewable Source. Energy produced from energy property described in IRC §48 or IRC §45(d)(1) through (4), (6), (9), or (11). The manner in which a resident is billed is limited to the rate at which the local Utility Provider would have charged the residents for the utility if that entity had provided it to them, and as may be further limited by the Texas Utilities Code or by regulation.

(6) Submetered Utility. A utility purchased from or through a local Utility Provider by the building Owner where the resident is billed directly by Owner of the building or to a third party billing company and the utility is:

(A) Based on the residents' actual consumption of that utility and not an allocation method or Ratio Utility Billing System ("RUBS"); and,

(B) The rate at which the utility is billed does not exceed the rate incurred by the building owner for that utility.

(7) Utility Allowance. An estimate of the expected monthly cost of any utility for which a resident is financially responsible, other than telephone, cable television, or internet.

(A) For HTC, TCAP, Exchange buildings, and SHTF include:

(i) Utilities paid by the resident directly to the Utility Provider;

(ii) Submetered Utilities; and,

(iii) Renewable Source Utilities.

(B) For a Development with a MFDL, unless otherwise prescribed in the program's Regulatory Agreement, include all utilities regardless of how they are paid.

(8) Utility Provider. The company that provides residential utility service (e.g. electric, gas, water, wastewater, and/or trash) to the buildings.

(c) Methods. The following options are available to establish a Utility Allowance for all programs except Developments funded with MFDL funds, which are addressed in subsection (d) of this section.

(1) Rural Housing Services ("RHS") buildings or buildings with RHS assisted residents. The applicable Utility Allowance for the Development will be determined under the method prescribed by the RHS (or successor agency). No other utility method described in this section can be used by RHS buildings or buildings with RHS assisted residents.

(2) HUD-Regulated buildings layered with any Department program. If neither the building nor any resident in the building receives RHS rental assistance payments, and the rents and the Utility Allowances of the building are regulated by HUD (HUD-regulated building), the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method described in this section can be used by HUD-regulated buildings. Unless further guidance is received from the U.S. Department of Treasury or the Internal Revenue Service ("IRS"), the Department considers Developments awarded a MFDL (e.g. HOME) to be HUD-Regulated buildings.

(3) Other Buildings. For all other rent-restricted Units, Development Owners must use one of the methods described in subparagraphs (A) - (E) of this paragraph:

(A) Public Housing Authority ("PHA"). The Utility Allowance established by the applicable PHA for the Housing Choice Voucher Program. The Department will utilize the Texas Local Government Code, Chapter 392 to determine which PHA is the most applicable to the Development.

(i) If the PHA publishes different schedules based on Building Type, the Owner is responsible for implementing the correct schedule based on the Development's Building Type(s). Example 614(1): The applicable PHA publishes a separate Utility Allowance schedule for Apartments (5+ units), one for Duplex/Townhomes and another for Single Family Homes. The Development consists of 20 buildings, ten of which are Apartments (5+ units) and the other ten buildings are Duplexes. The Owner must use the correct schedule for each Building Type.

(ii) In the event the PHA publishes a Utility Allowance schedule specifically for energy efficient units, and the Owner desires to use such a schedule, the Owner must demonstrate that the building(s) meet the housing authority's specifications for energy efficiency once every five years.

(iii) If the applicable PHA allowance lists flat fees for any utility, those flat fees must be included in the calculation of the Utility Allowance if the resident is responsible for that utility.

(iv) If the individual components of a Utility Allowance are not in whole number format, the correct way to calculate the total allowance is to add each amount and then round the total up to the next whole dollar. Example 614(2): Electric cooking is $8.63, Electric Heating is $5.27, Other Electric is $24.39, Water and Sewer is $15. The Utility Allowance in this example is $54.00.

(v) If an Owner chooses to implement a methodology as described in subparagraph (B), (C), (D), or (E) of this paragraph, for Units occupied by Section 8 voucher holders, the Utility Allowance remains the applicable PHA Utility Allowance established by the PHA from which the household's voucher is received.

(vi) If the Development is located in an area that does not have a municipal, county, or regional housing authority that publishes a Utility Allowance schedule for the Housing Choice Voucher Program, Owners must select an alternative methodology, unless the building(s) is located in the published Housing Choice Voucher service area of:

(I) A Council of Government created under Texas Local Government Code, Chapter 303, that operates a Housing Choice Voucher Program; or,

(II) The Department's Housing Choice Voucher Program.

(B) Written Local Estimate. The estimate must come from the local Utility Provider, be signed by the Utility Provider representative, and specifically include all Component Charges for providing the utility service.

(C) HUD Utility Schedule Model. The HUD Utility Schedule Model and related resources can be found at http://www.huduser.gov/portal/resources/utilallowance.html (or successor URL). Each item on the schedule must be displayed out two decimal places. The total allowance must be rounded up to the next whole dollar amount. The Component Charges used can be no older than those in effect 60 days prior to the beginning of the 90 day period described in described in paragraph (f)(3) of this section related to Effective Dates.

(i) The allowance must be calculated using the MS Excel version available at http://www.huduser.org/portal/resources/utilmodel.html (or successor URL), as updated from time to time, with no changes or adjustments made other than entry of the required information needed to complete the model.

(ii) In the event that the PHA code for the local PHA to the Development is not listed in "Location" tab of the workbook, the Department will use the PHA code for the PHA that is closest in distance to the Development using online mapping tools (e.g. MapQuest).

(iii) Green Discount. If the Owner elects any of the Green Discount options for a Development, documentation to evidence that the units and the buildings meet the Green Discount standard as prescribed in the model is required for the initial approval and every subsequent annual review. In the event the allowance is being calculated for an application of Department funding (e.g. 9% Housing Tax Credits), upon request, the Department will provide both the Green Discount and the non-Green Discount results for application purposes; however, to utilize the Green Discount allowance for leasing activities, the Owner must evidence that the units and buildings have met the Green Discount elected when the request is submitted as required in subsection (l) of this section.

(iv) Do not take into consideration any costs (e.g. penalty) or credits that a consumer would incur because of their actual usage. Example 614(3) The Electric Fact Label for ABC Electric Utility Provider provides a Credit Line of $40 per billing cycle that is applied to the bill when the usage is greater than 999 kWh and less that 2000 kWh. Example 614(4) A monthly minimum usage fee of $9.95 is applied when the usage is less than 1000 kWh in the billing cycle. When calculating the allowance, disregard these types costs or credits.

(D) Energy Consumption Model. The model must be calculated by a properly licensed mechanical engineer. The individual must not be related to the Owner within the meaning of §267(b) or §707(b) of the Code. The utility consumption estimate must, at minimum, take into consideration specific factors that include, but are not limited to, Unit size, building type and orientation, design and materials, mechanical systems, appliances, characteristics of building location, and available historical data. Component Charges used must be no older than in effect 60 days prior to the beginning of the 90 day period described in paragraph (f)(3) of this section related to Effective Dates; and,

(E) An allowance based upon an average of the actual use of similarly constructed and sized Units in the building using actual utility usage data and Component Charges, provided that the Development Owner has the written permission of the Department. This methodology is referred to as the "Actual Use Method." For a Development Owner to use the Actual Use Method they must:

(i) Provide a minimum sample size of usage data for at least five Continuously Occupied Units of each Unit Type or 20 percent of each Unit Type whichever is greater. If there are less than five Units of any Unit Type, data for 100 percent of the Unit Type must be provided;

(ii) Upload the information in subclause (I) - (IV) of this clause to the Development's CMTS account no later than the beginning of the 90 day period after which the Owner intends to implement the allowance, reflecting data no older than 60 days prior to the 90 day implementation period described in described in paragraph (f)(3) of this section related to Effective Dates.

(I) An Excel spreadsheet listing each Unit for which data was obtained to meet the minimum sample size requirement of a Unit Type, the number of bedrooms, bathrooms and square footage for each Unit, the household's move-in date, the utility usage (e.g. actual kilowatt usage for electricity) for each month of the 12 month period for each Unit for which data was obtained, and the Component Charges in place at the time of the submission;

(II) All documentation obtained from the Utility Provider (or billing entity for the utility provider) and/or copies of actual utility bills gathered from the residents, including all usage data not needed to meet the minimum sample size requirement and any written correspondence from the utility provider;

(III) The rent roll showing occupancy as of the end of the month for the month in which the data was requested from the utility provider; and

(IV) Documentation of the current Utility Allowance used by the Development.

(iii) Upon receipt of the required information, the Department will determine if the Development Owner has provided the minimum information necessary to calculate an allowance using the Actual Use Method. If so, the Department shall calculate the Utility Allowance for each bedroom size using the guidelines described in subclause (I) - (V) of this clause;

(I) If data is obtained for more than the sample requirement for the Unit Type, all data will be used to calculate the allowance;

(II) If more than 12 months of data is provided for any Unit, only the data for the most current twelve 12 will be averaged;

(III) The allowance will be calculated by multiplying the average units of measure for the applicable utility (i.e., kilowatts over the last 12 months by the current rate) for all Unit Types within that bedroom size. For example, if sufficient data is supplied for 18 two bedroom/one bath Units, and 12 two bedroom/two bath Units, the data for all 30 Units will be averaged to calculate the allowance for all two bedroom Units;

(IV) The allowance will be rounded up to the next whole dollar amount. If allowances are calculated for different utilities, each utility's allowance will be rounded up to the next whole dollar amount and then added together for the total allowance; and

(V) If the data submitted indicates zero usage for any month, the data for that Unit will not be used to calculate the Utility Allowance.

(iv) The Department will complete its evaluation and calculation within forty-five (45) days of receipt of all the information requested in clause (ii) of this subparagraph;

(d) In accordance with 24 CFR §92.252, for a MFDL in which the Department is the funding source, the Utility Allowance will be established in the following manner:

(1) For Developments that, as a result of funding, must calculate the Utility Allowance under HUD Multifamily Notice H-2014-4, as revised from time to time, the applicable Utility Allowance for all rent restricted Units in the building is the applicable Utility Allowance calculated under that Notice. No other utility method described in this section can be used.

(2) Other Buildings. The Utility Allowance may be initiated by the Owner using the methodologies described in paragraph (3)(B), (C), (D), or (E) of subsection (c) related to Methods.

(3) If a request is not received by October 1st, the Department will calculate the Utility Allowance using the HUD Utility Schedule Model. For property specific data, the Department will use:

(A) The information submitted in the Annual Owner's Compliance Report;

(B) Entrance Interview Questionnaires submitted with prior onsite reviews; or,

(C) The owner may be contacted and required to complete the Utility Allowance Questionnaire. In such case, a five day period will be provided to return the completed questionnaire.

(D) Utilities will be evaluated in the following manner:

(i) For regulated utilities, the Department will contact the Utility Provider directly and apply the Component Charges in effect no later than 60 days before the allowance will be effective.

(ii) For deregulated utilities:

(I) The Department will use the Power to Choose website and search available Utility Providers by ZIP code;

(II) The plan chosen will be the median cost per kWh based on average price per kWh for the average monthly use of 1000 kWh of all available plans; and,

(III) The actual Component Charges from the plan chosen in effect no later than 60 days before the allowance will be effective will be entered into the Model.

(E) The Department will notify the Owner contact in CMTS of the new allowance and provide the backup for how the allowance was calculated. The owner will be provided a five day period to review the Department's calculation and note any errors. Only errors related to the physical characteristics of the building(s) and utilities paid by the residents will be reconsidered; the utility plan and Utility Provider selected by the Department and Component Charges used in calculating the allowance will not be changed. During this five day period, the owner also has the opportunity to submit documentation and request use of any of the available Green Discounts.

(F) The allowance must be implemented for rent due in all program units thirty days after the Department notifies the Owner of the allowance.

(4) HTC Buildings in which there are units under a MFDL program are considered HUD- Regulated buildings and the applicable Utility Allowance for all rent restricted Units in the building is the Utility Allowance calculated under the MFDL program. No other utility method described in this section can be used by HUD-regulated buildings. If the Department is not the awarding jurisdiction, Owners are required to obtain the Utility Allowance established by the awarding jurisdiction, and to document all efforts to obtain such allowance to evidence due diligence in the event that the jurisdiction is nonresponsive. In such an event, provided that, sufficient evidence of due diligence is demonstrated, the Department, in its sole discretion, may allow for the use of the methods described in (3)(A), (B), (C), or (D) of subsection (c) related to Methods to calculate and establish its utility allowance.

(e) Acceptable Documentation. For the Methods where utility specific information is required to calculate the allowance (e.g. base charges, cost per unit of measure, taxes) Owners should obtain documentation directly from the Utility Provider and/or Regulating State Agency. Any Component Charges related to the utility that are published by the Utility Provider and/or Regulating State Agency must be included. In the case where a utility is billed to the Owner of the building(s) and the Owner is billing residents through a third party billing company, the Component Charges published by the Utility Provider and not the third party billing company will be used.

(f) Changes in the Utility Allowance. An Owner may not change Utility Allowance methods, start or stop charging residents for a utility without prior written approval from the Department. Example 614(5): A Housing Tax Credit Development has been paying for water and sewer since the beginning of the Compliance Period. In year 8, the Owner decides to require residents to pay for water and sewer. Prior written approval from the Department is required. Any such request must include the Utility Allowance Questionnaire found on the Department's website and supporting documentation.

(1) The Department will review all requests, with the exception of the methodology prescribed in paragraph (3)(E) of subsection (c) related to Methods, within 90 days of the receipt of the request.

(2) If the Owner fails to post the notice to the residents and simultaneously submit the request to the Department by the beginning of the 90 day period, the Department's approval or denial will be delayed for up to 90 days after Department notification. Example 614(6): The Owner has chosen to calculate the electric portion of the Utility Allowance using the written local estimate. The annual letter is dated July 5, 2014, and the notice to the residents was posted in the leasing office on July 5, 2014. However, the Owner failed to submit the request to the Department for review until September 15, 2014. Although the Notice to the Residents was dated the date of the letter from the utility provider, the Department was not provided the full 90 days for review. As a result, the allowance cannot be implemented by the owner until approved by the Department.

(3) Effective dates. If the Owner uses the methodologies as described in subparagraphs (3)(A) of subsection (c) related to Methods of this section, any changes to the allowance can be implemented immediately, but must be implemented for rent due at least 90 days after the change. For methodologies as described in paragraph (3)(B), (C), (D) and (E) of subsection (c) related to Methods, the allowance cannot be implemented until the estimate is submitted to the Department and is made available to the residents by posting in a common area of the leasing office at the Development. This action must be taken by the beginning of the 90 day period in which the Owner intends to implement the Utility Allowance. Nothing in this section prohibits an Owner from reducing a resident's rent prior to the end of the 90 day period when the proposed allowance would result in a gross rent issue.
Figure: 10 TAC §10.614(f)(3)

(g) Requirements for Annual Review.

(1) RHS and HUD-Regulated Buildings. Owners must demonstrate that the utility allowance has been reviewed annually and in accordance with the RHS or HUD regulations.

(2) Buildings using the PHA Allowance. Owners are responsible for periodically determining if the applicable PHA released an updated schedule to ensure timely implementation. When the allowance changes or a new allowance is made available by the PHA, it can be implemented immediately, but must be implemented for rent due 90 days after the PHA releases an updated scheduled.

(3) Written Local Estimate, HUD Utility Model Schedule and Energy Consumption Model. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than October 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review. At the same time the request is submitted to the Department, the Owner must post, at the Development, the Utility Allowance estimate in a common area of the leasing office where such notice is unobstructed and visible in plain sight. The Department will review the request for compliance with all applicable requirements and reasonableness. If, in comparison to other approved Utility Allowances for properties of similar size, construction and population in the same geographic area, the allowance does not appear reasonable or appears understated, the Department may require additional support and/or deny the request.

(4) Actual Use Method. Owners must update the allowance once a calendar year. The update and all back up documentation required by the method must be submitted to the Department no later than August 1st of each year. However, Owners are encouraged to submit prior to the deadline to ensure the Department has time to review.

(h) For Owners participating in the Department's Section 811 Project Rental Assistance ("PRA") Program, the Utility Allowance is the allowance established in accordance with this section related to the other multifamily program(s) at the Development. Example 614(7) ABC Apartments is an existing HTC Development now participating in the PRA Program. The residents pay for electricity and the Owner is using the PHA method to calculate the Utility Allowance for the HTC Program. The appropriate Utility Allowance for the PRA Program is the PHA method.

(i) Combining Methods. In general, Owners may combine any methodology described in this section for each utility service type paid directly by the resident and not by or through the Owner of the building (e.g. electric, gas). For example, if residents are responsible for electricity and gas, an Owner may use the appropriate PHA allowance to determine the gas portion of the allowance and use the Actual Use Method to determine the electric portion of the allowance. RHS and certain HUD-Regulated buildings are not allowed to combine methodologies.

(j) The Owner shall maintain and make available for inspection by the resident all documentation, including, but not limited to, the data, underlying assumptions and methodology that was used to calculate the allowance. Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling Unit of the resident at the convenience of both the Owner and resident.

(k) Utility Allowances for Applications.

(1) If the application includes RHS assisted buildings or tenants, the utility allowance is prescribed by the RHS program. No other method is allowed.

(2) If the application includes HUD-Regulated buildings for HUD programs other than a MFDL program the applicable Utility Allowance for all rent restricted Units in the building is the applicable HUD Utility Allowance. No other utility method is allowed.

(3) If the application includes a MFDL where the Department is the Participating Jurisdiction, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section. In the event that the application has a MFDL from the Department and another Participating Jurisdiction, the Department will require the use of the allowance calculated by the Department.

(4) If the application includes a MFDL where the Department is the not the Participating Jurisdiction, Applicants are required to request in writing the Utility Allowance from the awarding jurisdiction. If the awarding jurisdiction does not respond or requests the Department to calculate the allowance, the Department will establish the initial Utility Allowance in accordance with subsection (d)(3) of this section.

(5) For all other applications, Applicants may calculate the utility allowance in accordance with paragraph (3)(A), (B), (C), (D), or (E) of subsection (c) related to Methods.

(A) Upon request, the Compliance Division will calculate or review an allowance within 21 days but no earlier than 90 days from when the application is due.

(B) Example 614(8) An application for a 9% HTC is due March 1, 2017. The applicant would like Department approval to use an alternative method by February 15, 2017. The request must be submitted to the Compliance Division no later than January 25, 2017, three weeks before February 15, 2017.

(C) Example 614(9) An Applicant intends to submit an applicant for a 4% HTC with Tax Exempt Bonds on August 11, 2017, and would like to use an alternative method. Because approval is needed prior to application submission, the request can be submitted no earlier than May 13, 2017, (90 days prior to August 11, 2017) and no later than July 21, 2017, (21 days prior to August 11, 2017).

(6) All Utility Allowance requests related to applications of funding must:

(A) Be submitted directly to ua_application@tdhca.state.tx.us. Requests not submitted to this email address will not be recognized.

(B) Include the "Utility Allowance Questionnaire for Applications" along with all required back up based on the method.

(7) If the Applicant is successful in obtaining an award, the Utility Allowance may be calculated in accordance with subsection (d) of this section.

(l) If Owners want to utilize the HUD Utility Schedule Model, the Written Local Estimate or the Energy Consumption Model to establish the initial Utility Allowance for the Development, the Owner must submit Utility Allowance documentation for Department approval, at minimum, 90 days prior to the commencement of leasing activities. This subsection does not preclude an Owner from changing to one of these methods after commencement of leasing.

(m) The Department reserves the right to outsource to a third party the review and approval of all or any Utility Allowance requests to use the Energy Consumption Model or when review requires the use of expertise outside the resources of the Department. In accordance with Treasury Regulation §1.42-10(c) any costs associated with the review and approval shall be paid by the Owner.

(n) All requests described in this subsection must be complete and uploaded directly to the Development's CMTS account using the "Utility Allowance Documents" in the type field and "Utility Allowance" as the TDHCA Contact. The Department will not be

able to approve requests that are incomplete and/or are not submitted correctly.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605806
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 4, 2016
Proposal publication date: September 9, 2016
For further information, please call: (512) 475-2330

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

SUBCHAPTER B. RATES, RATE-MAKING, AND RATES/TARIFF CHANGES

16 TAC §24.21

The Public Utility Commission of Texas (commission) adopts an amendment to §24.21, relating to Form and Filing of Tariffs with changes to the proposed text as published in the June 24, 2016, issue of the *Texas Register* (41 TexReg 4570). The amendment will update, clarify, and streamline provisions regarding minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. This amendment is adopted under Project Number 45112.

A public hearing on the amendment was held at commission offices on Tuesday, August 2, 2016 at 1:00 p.m. Representatives from the Water IOUs (Investor Owned Utilities) (comprised of Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc. d/b/a Aqua Texas, SJWTX, Inc. d/b/a Canyon Lake Water Service Company, and SouthWest Water Company) attended the hearing and provided comments. To the extent that these comments differ from the submitted written comments, such comments are summarized herein.

The commission received written comments on the proposed amendment from Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas (collectively, Aqua); the City of Houston (Houston); the Texas Rural Water Association (TRWA); and the Water IOUs. The commission received oral comments from MSEC Enterprises, Inc. (MSEC). The commission received written reply comments from Houston and the Water IOUs.

In addition, in this project the commission adopts language in §24.21(b)(1)(B) that was originally proposed as §24.105(b) in Project No. 45111. Houston, the Water IOUs, and the Office of Public Utility Counsel (OPUC) filed comments on proposed §24.105(b) in Project No. 45111. Houston and the Water IOUs filed reply comments on proposed §24.105(b) in Project No. 45111. As the proposed language is being adopted in this project, the commission summarizes and responds below to the comments and reply comments received on proposed §24.105(b).

Comments on specific sections of the rule

Section 24.21(b)(1)

Houston and the Water IOUs requested clarification as to whether §24.21(b)(1)(C) applies only to utilities that are new utilities or includes utilities that are functioning utilities that are adding a subdivision to their service territory. The Water IOUs indicated that they are concerned that §24.21(b)(1)(B), which requires compliance with proposed §24.105(b) (being revised in Project No. 45111), would trigger an 18-month window to file a rate case where new areas or subdivisions are added to an existing certificate of convenience and necessity (CCN). The Water IOUs asserted that this did not appear to be Staff's intent, and at any rate, would be a significant and costly undertaking given the new Class A Utility rate case requirements. The Water IOUs argued that this would hamper utility growth and development in Texas and put utilities at a disadvantage to competitors that do not require commission-approved rates or CCNs to serve. The Water IOUs requested that an acquiring utility be permitted to identify the approved tariff it seeks to use for an added or transferred CCN system or area in its CCN application without prompting a rate case. The Water IOUs also commented that moving the language contained in proposed §24.105(b) (currently being revised in Project No. 45111) over to §24.21 would result in a more logical set of rules, as the language in question and §24.21 both address tariffs, while §24.105 addresses CCNs.

Houston argued that §24.21(b)(1)(A) appears to be missing the phrase *a utility shall file* before *every tariff.*

The Water IOUs objected to a requirement that utilities take the seller's or transferor's rate/tariff provisions as their own in CCN or utility system sale, transfer, or merger applications when a rate case is not simultaneously filed. The Water IOUs argued that this approach (1) has resulted in fractured rate structures for the Water IOUs where consolidation would otherwise be appropriate; (2) has created a situation where customers pay rates based on cost of service considerations not applicable to their provider; and (3) is contrary to the filed rate doctrine as applied in *Entex v. Railroad Commission of Texas,* 18 S.W.3d 858 (Tex. App.-Austin 2000, pet. denied). The Water IOUs argued that *Entex* requires that a utility charge the rates that have been approved for that utility, not the rates of an acquired utility. The Water IOUs supported allowing a CCN applicant to simply identify the approved tariff that should apply to an area where service would be extended under a CCN amendment or acquisition followed by commission acceptance if that application is approved. The Water IOUs argued that this approach would further the policy objective of promoting regionalized rates and services. The Water IOUs indicated that they would not object to providing evidence of compliance with Texas Water Code §13.145 (TWC) in terms of substantial similarity for consolidation within a tariff.

In reply, Houston argued that an existing approved tariff may not reasonably reflect the cost of service for the newly acquired or constructed service area. Houston also argued that the Water IOUs' suggested revisions to the subsection would usurp munic-

ipal authority. Therefore, Houston recommended rejecting the Water IOUs' revisions.

In addition, the Water IOUs recommended moving away from identifying systems and areas with specificity within each tariff, or at a minimum, making that the exception rather than the rule. Instead, the Water IOUs argued that the utility's CCN number, along with the county and any applicable city, could reasonably remain as potential identifiers. The Water IOUs also provided additional clarifying revisions.

Commission response

The commission notes Houston's and the Water IOUs' concerns that §24.21(b)(1)(C) is unclear. As stated in the 45112 workshop, §24.21(b)(1)(C) applies only to utilities that are new utilities. The commission previously revised this language from its strawman, and the Water IOUs' comments appear to largely focus on Project No. 45111, which amends §24.105(b). The commission agrees with the Water IOUs that moving the language currently proposed for §24.105(b) in Project No. 45111 into §24.21 is logical given the subject matter of §24.21. The commission therefore inserts the language in question in §24.21(b)(1)(B). The commission responds below to the comments received in Project No. 45111 on the language proposed as §24.105(b).

The commission agrees with Houston that the words *the utility shall file* should appear before *every tariff* and adopts the suggested language.

The commission declines to adopt the Water IOUs' suggestion that a CCN applicant simply identify the tariff to be applied to a system added to its certificated service area under a CCN amendment or acquisition. Such a change would be beyond the scope of the changes that were originally noticed in this project, which proposed changes to address minor tariff changes, pass-through clauses, and surcharges for water and sewer utilities. The issues raised by the Water IOUs' suggestion also implicate §24.109, which is currently being amended in project no. 45111. These issues are better addressed in a separate project after this project and project no. 45111 have been completed.

The commission declines to adopt the Water IOUs' suggestion that a system's CCN number, along with the county and any applicable city, are sufficient identifiers for a system. The system and subdivision names provide needed clarity to interested parties regarding the location of the system affected. The additional information also allows commission staff to better communicate with customers about which system is being affected. Furthermore, the Texas Commission on Environmental Quality (TCEQ) typically tracks systems by public water system name, not necessarily by CCN number. Not providing the system name would hamper interagency cooperation.

Section 24.21(b)(1)(B) (Originally proposed as §24.105(b) in Project No. 45111)

OPUC supported the inclusion of proposed subsection (b) in §24.105. OPUC commented that the proposed language appeared to allow a utility to start charging customers for water service without the benefit of test year data. As a result, OPUC proposed that the 18 month true up provide that any rates collected in excess of the projected revenue requirement be reflected as customer contributed capital as an offset to rate base. In response to OPUC's comments, the Water IOUs reiterated their opposition to the proposed language as published, particularly the inclusion of a ratemaking cost of service treatment clause. The Water IOUs stated that it would be inappropriate to place such a provision in CCN rules like §24.105. The Water IOUs also indicated that they would not object to the application of the *Entex* standard in §24.105 as doing so would not result in a rate change.

The Water IOUs commented that the proposed language would require a rate application within 18 months of a utility filing a CCN application and would impose a number of other requirements every time a utility filed a CCN application. The Water IOUs reiterated their opposition to such requirements and indicated that their understanding was that the language was intended to apply only to new utilities entering the market for the first time. The Water IOUs requested that the language be removed or revised accordingly. In its reply, Houston agreed that the application of the provision was unclear and stated that, to the extent the commission would be making a rate determination upon approving a CCN, it would usurp the original jurisdiction of municipalities over the rates and services of certain water and sewer utilities.

Houston noted that the language proposed for §24.105(b) appeared to delve into rate related issues, despite Project No. 45111's stated purpose of addressing non-rate related matters. Houston further indicated that it was unclear whether the provision would apply to existing utilities or only to new utilities entering the market. Houston also stated that it was unclear whether the commission would make a rate determination upon initial approval of the CCN or whether the rate determination would be made and trued up in the rate proceeding. Houston cautioned that to the extent the commission would be making rate determinations upon approving CCNs, it would be usurping the original jurisdiction of municipalities over the rates and service of certain water and sewer utilities.

Commission response

The commission agrees with the Water IOUs and Houston that the subject matter of proposed §24.105(b) is more appropriately addressed in §24.21. The commission therefore moves the language into §24.21(b)(1)(B) and responds to comments received on proposed §24.105(b) in Project No. 45111 in this Project No. 45112.

The commission agrees with OPUC that excess collections during the test year for a new utility should be reflected as customer contributed capital. However, the commission declines to adopt OPUC's proposed language, as the commission has determined that over collections should be calculated by comparing rates collected during the test year as determined in a rate case, not with a projected revenue requirement, as suggested by OPUC. Therefore, any customer contributed capital would be addressed in a rate case proceeding where the revenue requirement is determined, and after the CCN application is processed.

In response to the concerns raised by the Water IOUs and Houston, the commission revises the provision to clarify that §24.21(b)(1)(B) applies only to new utilities entering the market and is not intended to infringe on the original rate jurisdiction of municipalities.

Section 24.21(b)(2)

Houston recommended adding the sentence *nothing in this Section 24.21 is intended to usurp the original jurisdiction of municipalities pursuant to Texas Water Code Section 13.042(a)* to the end of the subsection. Houston argued that this sentence is necessary to make clear that the municipality exercising original jurisdiction over the utility's rates should approve such charges, not the commission.

The Water IOUs were generally supportive of the revisions to this subsection and recommended only minor edits to enhance usability. In particular, the Water IOUs suggested adding an exception to the requirement to use specific rule language for pass-through notices if alternative language is already required in a utility's approved tariff or, alternatively, eliminating specific language requirements from the rule. The Water IOUs requested clarification as to whether the proposed rule is intended to allow utilities discretion whether to implement changes to pass-through charges in any particular year after a pass-through provision is adopted, while the requirement to file a true-up report is intended to be mandatory. The Water IOUs suggested allowing extension policy adoptions or revisions as a minor tariff change. They argued that a major rate case should not be required to implement such a change given that it will not typically impact existing customers. Finally, the Water IOUs recommended permitting pass-through of water use or water rights reservation fee costs in §24.21(b)(2)(B)(ii) as these types of pass-through costs have been approved before.

Houston opposed two of the Water IOUs' recommendations. First, Houston argued that the Water IOUs provided no showing that addressing extension policy adoptions or revisions in a rate case is inefficient or unduly burdensome. Houston argued that a base rate proceeding provides the opportunity to more thoroughly examine the reasonableness and impact of such proposals on existing and new customers. Second, Houston argued that the Water IOUs provided no justification to treat pass-through of water use or water rights reservation fees as minor tariff changes.

Commission response

The commission agrees with Houston that a municipality exercising original jurisdiction over the utility's rates should approve such charges. Because §24.21(b)(2) begins with language that excludes utilities under the original rate jurisdiction of a municipality, the commission declines to adopt the suggested language. Instead, the commission modifies §24.21(b)(2)(A) to further clarify that the rule does not usurp the original rate jurisdiction of municipalities.

The commission declines to adopt the Water IOUs' suggestion that an exception be added to the requirement to use specific language for pass through notices if alternative language is already required in a utility's approved tariff. If the tariff to which a pass-through is being added already requires specific language for customer notice of a change to a pass-through provision, that language can be included in the customer notice along with the language required by the rule. The commission also declines to eliminate specific language requirements from the rule, as it is necessary to ensure that customers receive a clear communication from the utility stating that any pass-through fees are directly passed through to the customer. Moreover, the language required upholds the purpose of the pass through, which is to allow the utility to pass-through any increases or decreases, but limit the total amount charged by the utility to what is actually paid to the provider.

The commission agrees with the Water IOUs that the utility has the discretion to change the pass-through rate, but only as long as the mandatory true-up report indicates that no over collection has occurred. The commission has changed the language of §24.21(b)(2)(C) to clarify this point.

The commission declines to adopt the Water IOUs' suggestion that extension policy adoptions or revisions be considered minor tariff changes and agrees with Houston that the Water IOUs' suggestion should not be implemented. A regular rate proceeding is necessary to ensure thorough review of these policy changes and ensure ratepayers have adequate opportunity to participate in the implementation and revision of extension policies.

The commission declines to adopt the Water IOUs' suggestion that water use or water reservation fees be included as pass-through provisions as a matter of rule because of the wide variety of charges for reservation fees as well as the complexity and controversy that this may bring to the process. The commission agrees with Houston that the Water IOUs' suggestion should not be implemented.

Section 24.21(b)(2)(B)(v) and (C)

Houston had several concerns about the combined pass-through provision. First, Houston stated that the provision does not specify how the combined pass-through charges should be structured. Second, Houston asserted that the provision does not make clear that the true-up should extend to both expenses and revenues. Finally, Houston argued that the provision should include an adjustment in the event that one or more of the underlying pass-through charges have ended within the twelve-month true-up period. To remedy these issues, Houston recommended adding language to §24.21(b)(2)(B)(v) and §24.21(b)(2)(C).

MSEC commented that a utility with a combined pass through provision could easily encounter a situation in which the entities that impose the charges being passed through raise their charges at different times during the year or multiple times during a single year. MSEC stated that in this scenario, the requirement in the proposed language that changes in a combined pass through provision be implemented only once per year would prevent the utility from passing through the increases as they occur, which could cause financial hardship for the utility. MSEC also requested that the true up requirement be clarified.

The Water IOUs objected to Houston's recommendation that there be an adjustment in the event that an underlying pass-through charge ends within a twelve-month true-up period. The Water IOUs asserted that requiring an adjustment in the current year would be inappropriate, since any change in a pass-through charge will result in a reduced pass-through charge for the entirety of the subsequent year.

Commission response

While the commission is cognizant of Houston's concerns about pass-through structure, the commission determines that the structure of pass-through charges is better addressed on a case-by-case basis because situations vary greatly. In response to Houston's concerns regarding the inclusion of both expenses and revenues in true-ups, the commission modifies §24.21(b)(2)(C) to clarify that the true-up does extend to both expenses and revenues. Regarding the issue of a pass-through charge that ends during a 12-month true-up period, the commission declines to adopt Houston's proposed modifications, as the commission agrees with the Water IOUs that requiring an adjustment mid-year has the potential to unnecessarily increase the number of pass through cases a utility must file in a given year.

In response to MSEC's concerns, the commission does not intend to require a utility that passes through costs from multiple entities to have a combined pass through provision. Rather, the intent is to allow utilities the option of requesting

a combined pass through provision. The commission also adds §24.21(b)(2)(B)(vi) to allow a utility with a combined pass through provision to replace the provision with individual pass through provisions as long as the utility's pass through charges are properly trued up. However, the commission declines to remove the requirement that a combined pass through provision be adjusted no more than once per year, as this requirement promotes efficiency by regulating the number of pass through applications filed and also promotes consistency between filings.

Section 24.21(b)(2)(E)(i), (b)(4), and (c)

Consistent with their comments on §24.21(b)(1) above, the Water IOUs recommended that the commission move away from requiring specific subdivision and system names in each tariff. Instead, they argued that the CCN number, county, and city, if any, should be all that is required. The Water IOUs argued that keeping track of specific subdivision and system names in a tariff is unwieldy and unnecessary. The Water IOUs provided specific revisions to accomplish this.

In response, Houston argued that it relies on CCN numbers, system names, and subdivision names to monitor rate applications that may impact customers served within Houston's jurisdiction. Houston argued that removing this information may make monitoring more difficult. For example, Houston stated that sometimes an area annexed by Houston may have service addresses that indicate a city other than Houston. Therefore, Houston recommended that the commission retain the requirement that tariffs include subdivision and system names.

Commission response

The commission agrees with Houston that specific subdivision and system names should continue to be included in each tariff. The commission finds Houston's concerns persuasive; in addition, commission staff routinely relies on subdivision and system names contained in tariffs in the course of working with applications filed by water and sewer utilities. The commission recognizes that removing subdivision and system names from tariffs would simplify and streamline tariffs, but concludes that the benefits of requiring subdivision and system names in tariffs outweigh the drawbacks. To facilitate the maintenance of current, correct tariffs, the commission modifies §24.21(b)(2)(A) to allow system and subdivision names in tariffs to be updated as a minor tariff change. This modification is designed to allow utilities to use the minor tariff change process to update tariffs to reflect changes or correct errors in subdivision or system names.

Section 24.21(b)(2) and 24.21(j)

The Water IOUs recommended including the addition and modification of temporary water rate provisions on the list of items eligible for minor tariff changes in §24.21(b)(2). They argued that temporary water rate provisions should be afforded the same type of administrative treatment as pass-through provisions. Accordingly, the Water IOUs provided specific edits to §24.21(b)(2) and §24.21(j) to accomplish this.

Commission response

The commission declines to include the addition and modification of temporary water rate provisions on the list of items eligible for minor tariff changes in §24.21(b)(2). The minor tariff change procedures would not provide customers with adequate notice and opportunity to protest the addition and modification of temporary water rate provisions.

Section 24.21(i)

While TRWA supported removal of language requiring water supply corporations (WSCs) to file three complete copies of their tariffs, it asserted that it is unclear whether the subsection requires WSCs to file one or six copies. TRWA asserted that the reference to 16 TAC §§22.71 .72 would require WSCs to file six copies. TRWA also noted that in one place the subsection references *a copy* and in another place *the copies.*

TRWA recommended that the commission revise the subsection to require WSCs to file only one complete copy of their tariffs. TRWA stated that the tariff filing is only informational as the commission does not have jurisdiction to review, approve, or take any other action in regards to a WSC's tariff filing. TRWA argued that it is an unnecessary burden on WSCs to file more than one copy. TRWA further argued that §22.71 is not designed to apply to an informational tariff filing as such a filing is not a pleading, rulemaking document, application, letter, memoranda, report, or discovery response. TRWA also stated that §22.33 does not apply to informational filing of WSC tariffs.

Commission response

The commission clarifies the language in this subsection to eliminate inconsistency regarding whether one copy or more than one copy of a tariff is to be filed. The commission declines to remove the reference to §22.71, as §22.71(c)(5) already addresses the number of copies that are to be included when tariffs are filed with the commission, and centralizing copy requirements in §22.71 will result in clearer, more logical rules than placing a separate requirement for WSCs in §24.21.

Comments on other recommendations

Aqua recommended that the commission add a system improvement charge to either §24.21 or a new rule section. Aqua stated that a system improvement charge, such as the one approved by the Pennsylvania Commission, is designed to provide ratepayers with improved service quality, greater rate stability, fewer main breaks, fewer service interruptions, and increased safety.

Aqua argued that a system improvement charge would be beneficial in Texas because Texas will require significant investment in upgrading, replacing, and maintaining existing water and wastewater infrastructure over the next 20 years. Aqua stated that a significant portion of the needed infrastructure will consist of smaller projects of short duration, and argued that a base rate case proceeding does not work well for recovering the costs of these projects. Instead, Aqua recommended that the commission add a system improvement charge to chapter 24 to allow utilities to recover the costs of certain capital additions outside of a base rate case. Even though the Texas Water Code does not contain a provision authorizing this type of charge, Aqua argued that the Public Utility Regulatory Act, Texas Utilities Code Annotated §36.210 does authorize this type of charge.

Houston strongly disagreed with Aqua's recommendation to add a system improvement charge. Houston argued that this rulemaking is not the appropriate venue to consider an alternative ratemaking mechanism because a system improvement charge is not a minor tariff change. Houston also argued that the commission should seek approval from the Texas legislature before implementing a system improvement charge or similar alternative ratemaking mechanism.

Commission response

The commission agrees with Houston that this rulemaking is not the appropriate venue to implement a system improvement charge, which is outside the scope of this project. At this time, the commission takes no position on the merits of a system improvement charge or similar alternative ratemaking mechanism for water and sewer utilities.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent and using defined terms more consistently.

This amendment is adopted under the Texas Water Code Annotated §13.041(b) (West 2008 and Supp. 2016) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b).

§24.21. Form and Filing of Tariffs.

(a) Approved tariff. A utility may not directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as follows:

(1) A utility may charge the rates proposed under the Texas Water Code (TWC) §13.187 or §13.1871 on or after the proposed effective date, unless the proposed effective date of the proposed rates is suspended or the regulatory authority sets interim rates.

(2) The regulatory assessment fee required in TWC §5.701(n) does not have to be listed on the utility's approved tariff to be charged and collected but must be included in the tariff at the earliest opportunity.

(3) A person who possesses facilities used to provide retail water utility service or a utility that holds a certificate of public convenience and necessity (CCN) to provide retail water service that enters into an agreement in accordance with TWC §13.250(b)(2), may collect charges for sewer services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(4) A utility may enter into a contract with a county to collect solid waste disposal fees and include those fees on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes, and filing of tariffs.

(1) Tariffs filed with applications for CCNs.

(A) When applying to obtain or amend a CCN, or to add a new water or sewer system or subdivision to its certificated service area, every utility shall file its proposed tariff with the commission and any regulatory authority with original rate jurisdiction over the utility.

(i) For a utility that is under the original rate jurisdiction of the commission, the tariff shall contain schedules of all the utility's rates, tolls, charges, rules, and regulations pertaining to all of its utility service(s) when it applies for a CCN to operate as a utility. The tariff must be on the form prescribed by the commission or another form acceptable to the commission.

(ii) For a utility under the original rate jurisdiction of a municipality, the utility must file with the commission a copy of its tariff as approved by the municipality.

(B) If a person applying for a CCN is not a retail public utility and would be under the original rate jurisdiction of the commission if the CCN application were approved, the person shall file a proposed tariff with the commission. The person filing the proposed tariff shall also:

(i) provide a rate study supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(ii) provide all calculations supporting the proposed rates;

(iii) provide all assumptions for any projections included in the rate study;

(iv) provide an estimated completion date(s) for the physical plant(s);

(v) provide an estimate of the date(s) service will begin for all phases of construction; and

(vi) provide notice to the commission once billing for service begins.

(C) A person who has obtained an approved tariff for the first time and is under the original rate jurisdiction of the commission shall file a rate change application within 18 months from the date service begins in order to revise its tariff to adjust the rates to a historic test year and to true up the new tariff rates to the historic test year. Any dollar amount collected under the rates charged during the test year in excess of the revenue requirement established by the commission during the rate change proceeding shall be reflected as customer contributed capital going forward as an offset to rate base for ratemaking purposes. An application for a price index rate adjustment under TWC §13.1872 does not satisfy the requirements of this subparagraph.

(D) Every water supply or sewer service corporation shall file with the commission a complete tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility services when it applies to operate as a retail public utility and to obtain or amend a CCN.

(2) Minor tariff changes. Except for an affected county or a utility under the original rate jurisdiction of a municipality, a utility's approved tariff may not be changed or amended without commission approval. Minor tariff changes shall not be allowed for any fees charged by affiliates. The addition of a new extension policy to a tariff or modification of an existing extension policy is not a minor tariff change. An affected county may change rates for retail water or sewer service without commission approval, but shall file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change.

(A) The commission may approve the following minor changes to utility tariffs under the original rate jurisdiction of the commission:

(i) service rules and policies;

(ii) changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by commission rules;

(iii) addition of the regulatory assessment fee payable to the TCEQ as a separate item or to be included in the currently authorized rate;

(iv) addition of a provision allowing a utility to collect retail sewer service charges in accordance with TWC §13.250(b)(2) or §13.147(d);

(v) rate adjustments to implement commission-authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs;

(vi) implementation of an energy cost adjustment clause under subsection (n) of this section;

(vii) implementation or modification of a pass-through provision calculation in a tariff, as provided in subparagraphs (B)-(E) of this paragraph, which is necessary for the correct recovery of the actual charges from pass-through entities, including line loss;

(viii) some surcharges as provided in subparagraph (F) of this paragraph;

(ix) modifications, updates, or corrections that do not affect a rate may be made to the following information contained in the tariff:

(I) the list of the cities, counties, and subdivisions in which service is provided;

(II) the public water system name(s) and corresponding identification number(s) issued by the TCEQ; and

(III) the sewer system names and corresponding discharge permit number(s) issued by the TCEQ.

(B) If a utility has provided proper notice as required in subparagraph (E) of this paragraph, the commission may approve a pass-through provision as a minor tariff change, even if the utility has never had an approved pass-through provision in its tariff. A pass-through provision may not be approved for a charge already included in the utility's cost of service used to calculate the rates approved by the commission in the utility's most recently approved rate change under TWC §13.187 or TWC §13.1871. A pass-through provision may only include passing through of the actual costs charged to the utility. Only the commission staff or the utility may request a hearing on a proposed pass-through provision or a proposed revision or change to a pass-through provision. A pass-through provision may be approved in the following situation(s):

(i) A utility that purchases water or sewage treatment and whose rates are under the original jurisdiction of the commission may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated.

(ii) A utility may pass through a temporary water rate provision implemented in response to mandatory reductions in water use imposed by a court, government agency, or other authority. The provision must specify how the temporary water rate provision is calculated.

(iii) A utility may include the addition of a production fee charged by a groundwater conservation district, including a production fee charged in accordance with a groundwater reduction plan entered in to by a utility in response to a groundwater conservation district production order or rule, as a separate line item in the tariff.

(iv) A utility may pass through the costs of changing its source of water if the source change is required by a governmental entity. The pass-through provision may not be effective prior to the date the conversion begins. The pass-through provision must be calculated using an annual true-up provision.

(v) A utility subject to more than one pass-through cost allowable in this section may request approval of an overall combined pass-through provision that includes all allowed pass-through costs to be recovered in one provision under subparagraph (C) of this paragraph. The twelve calendar months (true-up period) for inclusion in the true-up report must remain constant, *e.g.,* January through December.

(vi) A utility that has a combined pass-through provision in its approved tariff may request to amend its tariff to replace the combined pass-through provision with individual pass-through provisions if all revenues and expenses have been properly trued up in a true-up report and all over-collections have been credited back to the customers. A utility that has replaced its previously approved combined pass-through provision with individual provisions may not request another combined pass-through until three years after the replacement has been approved unless good cause is shown.

(C) A change in the combined pass-through provision may only be implemented once per year. The utility must file a true-up report within one month after the end of the true-up period. The report must reconcile both expenses and revenues related to the combined pass-through charge for the true-up period. If the true-up report reflects an over-collection from customers, the utility must change its combined pass-through rate using the confirmed rate changes to charges being passed through and the over-collection from customers reflected in the true-up report. If the true-up report does not reflect an over-collection from the customers, the implementation of a change to the pass-through rate is optional. The change may be effective in a billing cycle within three months after the end of the true-up period as long as the true-up clearly shows the reconciliation between charges by pass-through entities and collections from the customers, and charges from previous years are reconciled. Only expenses charged by the pass-through provider(s) shall be included in the provision. The true-up report shall include:

(i) a list of all entities charging fees included in the combined pass-through provision, specifying any new entities added to the combined pass-through provision;

(ii) a summary of each charge passed through in the report year, along with documentation verifying the charge assessed and showing the amount the utility paid;

(iii) a comparison between annual amounts billed by all entities charging fees included in the pass-through provision with amounts billed for the usage by the utility to its customers in the pass-through period;

(iv) all calculations and supporting documentation;

(v) a summary report, by year, for the lesser of all years prior or five years prior to the pass-through period showing the same information as in clause (iii) of this subparagraph with a reconciliation to the utility's booked numbers, if there is a difference in any year; and

(vi) any other documentation or information requested by the commission.

(D) For any pass-through provision granted under this section, all charges approved for recovery of pass-through costs shall be stated separately from all charges by the utility to recover the revenue requirement. Except for a combined pass-through provision, the calculation for a pass-through gallonage rate for a utility with one source of water may be made using the following equation, which is provided as an example: $G + \{G/(1-L)\}$, where G equals the new gallonage charge by source supplier and L equals the line loss reflected as a percentage expressed in decimal format (for example, 8.5% would be expressed as 0.085).

(E) A utility that wishes to revise or implement an approved pass-through provision shall take the following actions prior to the beginning of the billing period in which the revision takes effect:

(i) submit a written notice to the commission that shall include:

(I) the affected CCN number(s);

(II) a list of the affected subdivision(s), public water system name(s) and corresponding number(s) issued by the TCEQ, and the water quality system name(s) and corresponding number(s) issued by the TCEQ, if applicable;

(III) a copy of the notice to the customers;

(IV) documentation supporting the stated amounts of any new or modified pass-through costs;

(V) historical documentation of line loss for one year;

(VI) all calculations and assumptions for any true-up of pass-through costs;

(VII) the calculations and assumptions used to determine the new rates; and

(VIII) a copy of the pages of the utility's tariff that contain the rates that will change if the utility's application is approved; and

(ii) e-mail (if the customer has agreed to receive communications electronically), mail, or hand-deliver notice to the utility's customers. Notice may be in the form of a billing insert and must contain:

(I) the effective date of the change;

(II) the present calculation of customer billings;

(III) the new calculation of customer billings;

(IV) an explanation of any corrections to the pass-through formula, if applicable;

(V) the change in charges to the utility for purchased water or sewer treatment or ground water reduction fee or subsidence, if applicable; and

(VI) the following language: "This tariff change is being implemented in accordance with the minor tariff changes allowed by 16 Texas Administrative Code §24.21. The cost to you as a result of this change will not exceed the costs charged to your utility."

(F) The following provisions apply to surcharges:

(i) A surcharge is an authorized rate to collect revenues over and above the usual cost of service.

(ii) If authorized by the commission or the municipality exercising original jurisdiction over the utility, a surcharge to recover the actual increase in costs to the utility may be collected over a specifically authorized time period without being listed on the approved tariff for:

(I) sampling fees not already recovered by rates;

(II) inspection fees not already recovered by rates;

(III) production fees or connection fees not already recovered by rates charged by a groundwater conservation district; or

(IV) other governmental requirements beyond the control of the utility.

(iii) A utility shall use the revenues collected through a surcharge approved by the commission only for the purposes noted in the order approving the surcharge. A utility shall handle the funds in the manner specified in the order approving the surcharge. The utility may redirect or use the revenues for other purposes only after first obtaining the approval of the commission.

(iv) The commission may require a utility to file periodic and/or final accounting information to show the collection and disbursement of funds collected through an approved surcharge.

(3) Tariff revisions and tariffs filed with rate changes.

(A) If the commission is the regulatory authority, the utility shall file its revisions with the commission. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(B) Each revision must be accompanied by a copy of the original tariff and a red-lined copy of the proposed tariff revisions clearly showing the proposed changes.

(4) Rate schedule. Each rate schedule must clearly state the public water system name(s) and the corresponding identification number(s) issued by the TCEQ or the sewer system name(s) and the corresponding identification number(s) issued by the TCEQ for each discharge permit, subdivision, city, and county in which the schedule is applicable.

(5) Tariff pages. Tariff pages must be numbered consecutively. Each page must show section number, page number, name of the utility, and title of the section in a consistent manner.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, must contain sections setting forth:

(1) a table of contents;

(2) a list of the cities, counties, and subdivision(s) in which service is provided, along with the public water system name(s) and corresponding identification number(s) issued by the TCEQ and sewer system names and corresponding discharge permit number(s) issued by the TCEQ to which the tariff applies;

(3) the CCN number(s) under which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any, and customer service inspection forms to be completed as required by the TCEQ;

(6) the extension policy;

(7) an approved drought contingency plan as required by the TCEQ; and

(8) the forms of payment to be accepted for utility services.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission must include a transmittal letter stating that the tariff attached is in compliance with the order, giving the docket number, date of the order, a list of tariff pages filed, and any other necessary information. Any service rules proposed in addition to those listed on the commission's tariff form or any modifications of a rule in the tariff must be clearly noted. All tariff pages must comply with all other sections in this chapter and must include only changes ordered. The effective date and/or wording of the tariff must comply with the provisions of the order.

(e) Availability of tariffs. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas all of its tariffs currently on file with the commission or regulatory authority, and its employees shall lend assistance to per-

sons requesting information and afford these persons an opportunity to examine any such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to a requesting party.

(f) Rejection. Any tariff filed with the commission and found not to be in compliance with this section shall be returned to the utility with a brief explanation of the reasons for rejection.

(g) Change by other regulatory authorities. Each utility operating within the corporate limits of a municipality exercising original jurisdiction shall file with the commission its current tariff that has been authorized by the municipality. If changes are made to the utility's tariff for one or more service areas under the jurisdiction of the municipality, the utility shall file its tariff reflecting the changes along with the ordinance, resolution or order issued by the municipality to authorize the change.

(h) Effective date. The effective date of a tariff change is the date of approval by the regulatory authority, unless otherwise specified by the regulatory authority, in a commission order, or by rule. The effective date of a proposed rate increase under TWC §13.187 or §13.1871 is the proposed date on the notice to customers and the regulatory authority, unless suspended by the regulatory authority.

(i) Tariffs filed by water supply or sewer service corporations. Every water supply or sewer service corporation shall file, for informational purposes only, its tariff showing all rates that are subject to the appellate jurisdiction of the commission and that are in force for any utility service, product, or commodity offered. The tariff must include all rates, rules, and regulations relating to utility service or extension of service, the CCN number(s), and all affected counties or cities. If changes are made to the water supply or sewer service corporation's tariff, the water supply or sewer service corporation shall file the tariff reflecting the changes, along with a cover letter with the effective date of the change. Tariffs filed under this subsection shall be filed in conformance with §22.71 of this title (relating to Filing of Pleadings, Documents, and Other Materials) and §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(j) Temporary water rate provision for mandatory water use reduction.

(1) A utility's tariff may include a temporary water rate provision that will allow the utility to increase its retail customer rates during periods when a court, government agency, or other authority orders mandatory water use reduction measures that affect the utility customers' use of water service and the utility's water revenues. Implementation of the temporary water rate provision will allow the utility to recover revenues that the utility would otherwise have lost due to mandatory water use reductions. If a utility obtains an alternate water source to replace the required mandatory reduction during the time the temporary water rate provision is in effect, the temporary water rate provision must be adjusted to prevent over-recovery of revenues from customers. A temporary water rate provision may not be implemented if an alternative water supply is immediately available without additional cost.

(2) The temporary water rate provision must be approved by the regulatory authority having original jurisdiction in a rate proceeding before it may be included in the utility's approved tariff or implemented as provided in this subsection. A proposed change in the temporary water rate provision must be approved in a rate proceeding. A utility that has filed a rate change within the last 12 months may file a request for the limited purpose of obtaining a temporary water rate provision.

(3) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in this paragraph to recover 50% or less of the revenues that would otherwise have been lost due to mandatory water use reductions. The formula for a temporary water rate provision for mandatory water use reduction under this paragraph is:
Figure: 16 TAC §24.21(j)(3)

(A) The utility shall file a temporary water rate provision for mandatory water use reduction request and provide customer notice as required by the regulatory authority, but is not required to provide complete financial data to support its existing rates. Notice must include a statement of when the temporary water rate provision would be implemented, the customer class(es) affected, the rates affected, information on how to protest and/or intervene in the rate change, the address of the regulatory authority, the time frame for protests, and any other information that is required by the regulatory authority. The utility's existing rates are not subject to review in this proceeding and the utility is only required to support the need for the temporary rate. A request for a temporary water rate provision for mandatory water use reduction under this paragraph is not considered a statement of intent to increase rates subject to the 12-month limitation in §24.23 of this title (relating to Time Between Filings).

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect.

(4) A utility may request a temporary water rate provision for mandatory water use reduction using the formula in paragraph (3) of this subsection or any other method acceptable to the regulatory authority to recover up to 100% of the revenues that would otherwise have been lost due to mandatory water use reductions.

(A) If the utility requests authorization to recover more than 50% of lost revenues, it shall submit financial data to support its existing rates as well as the temporary water rate provision for mandatory water use reduction even if no other rates are proposed to be changed. The utility's existing rates are subject to review in addition to the temporary water rate provision for mandatory water use reduction.

(B) The utility shall establish that the projected revenues that will be generated by the temporary water rate provision for mandatory water use reduction are required by the utility to pay reasonable and necessary expenses that will be incurred by the utility during the time mandatory water use reductions are in effect; that the rate of return granted by the regulatory authority in the utility's last rate case does not adequately compensate the utility for the foreseeable risk that mandatory water use reductions will be ordered; and that revenues generated by existing rates do not exceed reasonable cost of service.

(5) The utility may place the temporary water rate provision into effect only after:

(A) it has been approved by the regulatory authority and included in the utility's approved tariff in a prior rate proceeding;

(B) there is an action by a court, government agency, or other authority requiring mandatory water use reduction measures that affect the utility's customers' use of utility services; and

(C) issuing notice as required by paragraph (7) of this subsection.

(6) The utility may readjust its temporary water rate provision to respond to modifications or changes to the original required

water use reductions by reissuing notice as required by paragraph (7) of this subsection. If the commission is the regulatory authority, only the commission or the utility may request a hearing on the proposed implementation.

(7) A utility implementing a temporary water rate for mandatory water use reduction shall take the following actions prior to the beginning of the billing period in which the temporary water rate provision takes effect:

(A) submit a written notice, including a copy of the notice received from the court, government agency, or other authority requiring the reduction in water use, to the regulatory authority; and

(B) e-mail, if the customer has agreed to receive communications electronically, or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the implementation and the new rate the customers will pay after the temporary water rate provision is implemented. If the commission is the regulatory authority, the notice must include the following language: "This rate change is being implemented in accordance with the temporary water rate provision approved by the Public Utility Commission of Texas to recognize the loss of revenues due to mandatory water use reduction ordered by (name of entity issuing order). The new rates will be effective on (date) and will remain in effect until the mandatory water use reductions are lifted or expired. The purpose of the rate is to ensure the financial integrity of the utility. The utility will recover through the rate (the percentage authorized by the temporary rate) % of the revenues the utility would otherwise have lost due to mandatory water use reduction by increasing the volume charge from ($ per 1,000 gallons to $ per 1,000 gallons)."

(8) A utility shall stop charging a temporary water rate provision as soon as is practicable after the order that required mandatory water use reduction is ended, but in no case later than the end of the billing period that was in effect when the order was ended. The utility shall notify its customers of the date that the temporary water rate provision ends and that its rates will return to the level authorized before the temporary water rate provision was implemented. The notice provided to customers regarding the end of the temporary water rate provision shall be filed with the commission.

(9) If the regulatory authority initiates an inquiry into the appropriateness or the continuation of a temporary water rate provision, it may establish the effective date of its decision on or after the date the inquiry is filed.

(k) Multiple system consolidation. Except as otherwise provided in subsection (m) of this section, a utility may consolidate its tariff and rate design for more than one system if:

(1) the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and

(2) the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation.

(l) Regional rates. The regulatory authority, where practicable, shall consolidate the rates by region for applications submitted under TWC §13.187 or §13.1871 with a consolidated tariff and rate design for more than one system.

(m) Exemption. Subsection (k) of this section does not apply to a utility that provided service in only 24 counties on January 1, 2003.

(n) Energy cost adjustment clause.

(1) A utility that purchases energy (electricity or natural gas) that is necessary for the provision of retail water or sewer service may request the inclusion of an energy cost adjustment clause in its tariff to allow the utility to adjust its rates to reflect increases and decreases in documented energy costs.

(2) A utility that requests the inclusion of an energy cost adjustment clause in its tariff shall file a request with the commission. The utility shall also give notice of the proposed energy cost adjustment clause by mail, either separately or accompanying customer billings, e-mail or by hand delivery to all affected utility customers at least 60 days prior to the proposed effective date. Proof of notice in the form of an affidavit stating that proper notice was delivered to affected customers and stating the date(s) of such delivery shall be filed with the commission by the utility as part of the request. Notice must be provided on the form prescribed by the commission for a rate application package filed under TWC §13.187 or §13.1871 and must contain the following information:

(A) the utility name and address, a description of how the increase or decrease in energy costs will be calculated, the effective date of the proposed change, and the class(es) of utility customers affected. The effective date of the proposed energy cost adjustment clause must be the first day of a billing period, which should correspond to the day of the month when meters are typically read, and the clause may not apply to service received before the effective date of the clause;

(B) information on how to submit comments regarding the energy cost adjustment clause, the address of the commission, and the time frame for comments; and

(C) any other information that is required by the commission.

(3) The commission's review of the utility's request is an uncontested matter not subject to a contested case hearing. However, the commission shall hold an uncontested public meeting if requested by a member of the legislature who represents an area served by the utility or if the commission determines that there is substantial public interest in the matter.

(4) Once an energy cost adjustment clause has been approved, documented changes in energy costs must be passed through to the utility's customers within a reasonable time. The pass-through, whether an increase or decrease, shall be implemented on at least an annual basis, unless the commission determines a special circumstance applies. Anytime changes are being made using this provision, notice shall be provided as required by paragraph (5) of this subsection. Copies of notices to customers shall be filed with the commission,

(5) Before a utility implements a change in its energy cost adjustment clause as required by paragraph (4) of this subsection, the utility shall take the following actions prior to the beginning of the billing period in which the implementation takes effect:

(A) submit written notice to the commission, which must include a copy of the notice sent to the customers, proof that the documented energy costs have changed by the stated amount; and

(B) e-mail, if the customer has agreed to receive communications electronically, mail, either separately or accompanying customer billings, or hand deliver notice to the utility's affected customers. Notice must contain the effective date of change and the increase or decrease in charges to the utility for documented energy costs. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved energy cost adjustment clause to recognize (increases) (decreases) in the documented energy costs. The cost of these charges to customers will not exceed the (increase) (decrease) in documented energy costs."

(6) The commission may suspend the adoption or implementation of an energy cost adjustment clause if the utility has failed to properly file the request or has failed to comply with the notice requirements or proof of notice requirements. If the utility cannot clearly demonstrate how the clause is calculated, the increase or decrease in documented energy costs or how the increase or decrease in documented energy costs will affect rates, the commission may suspend the adoption or implementation of the clause until the utility provides additional documentation requested by the commission. If the commission suspends the adoption or implementation of the clause, the adoption or implementation will be effective on the date specified by the commission.

(7) Energy cost adjustment clauses may not apply to contracts or transactions between affiliated interests.

(8) A proceeding under this subsection is not a rate case under TWC §§13.187, 13.1871, or 13.1872.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605789
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: December 4, 2016
Proposal publication date: June 24, 2016
For further information, please call: (512) 936-7223

♦ ♦ ♦

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 98. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§98.1, 98.2, 98.11, 98.62, and new §98.200, in Chapter 98, Day Activity and Health Services Requirements. The amendments to §98.2 and §98.62 are adopted with changes to the proposed text published in the July 22, 2016, issue of the *Texas Register* (41 TexReg 5399). The amendments to §98.1 and §98.11, and new §98.200 are adopted without changes to the proposed text.

The amendments and new section are adopted to implement changes made by Senate Bill (S.B.) 1999, 84th Legislature, Regular Session, 2015. Senate Bill 1999 amended the title of Texas Human Resources Code (THRC), Chapter 103, from Adult Day Care to Day Activity and Health Services Requirements, and made additional conforming amendments to the chapter. The amendments change the title of Chapter 98 and change terminology throughout the chapter to conform to S.B. 1999. In addition, the amendments restate the purpose of the chapter more succinctly, delete unnecessary definitions, and amend definitions for consistency and clarity. The term "facility" is redefined to refer to a "DAHS facility" that must be licensed under THRC Chapter 103. Prior to the proposed amendment, the term "DAHS facility," in Chapter 98, was defined as an entity that contracts with DADS to provide DAHS in accordance with Subchapter H. With the proposed amendment, a new section, §98.200, is adopted to clarify that Subchapter H applies only to a licensed DAHS facility that contracts with DADS to provide DAHS. Other amendments update terminology, including replacing "client" with "individual," and referring to the Texas Board of Nursing. The amendments clarify the meaning of the rules by restructuring provisions, deleting passive voice, and using consistent terminology.

DADS received a written comment from the Coalition for Nurses in Advanced Practice (CNAP) on the proposed rules. A summary of the comment and the response follows.

Comment: The commenter suggested that a "prescribing healthcare professional," such as an advanced practice registered nurse or a physician's assistant, be allowed to sign a physician order and be added to §98.2 and §98.62.

Response: Upon further review of the agency's proposed amendments to §98.62, and after receiving the commenter's suggestion to add "prescribing healthcare professional" to the entire rule base in Chapter 98, the agency determined that the proposed amendments to §98.62(f)(1)(B) and §98.62(f)(4)(A) would cause conflict to the licensing and contracting rules in Chapter 98 relating to the state plan. The agency, therefore, has withdrawn the proposed changes to these sections, except for changes that add clarity and readability to §98.62. The agency will revisit the commenter's suggestion when the Chapter 98 rules are amended in the near future. However, due to the limited scope of the current rule project, the agency will not revise the rule as suggested.

The agency updated the definitions of "DADS" and "department" to include "or its successor agency."

SUBCHAPTER A. INTRODUCTION

40 TAC §98.1, §98.2

The amendments 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.

§98.1. Purpose.

The purpose of this chapter is to:

(1) implement Texas Human Resources Code, Chapter 103, by establishing licensing procedures and standards for a DAHS facility; and

(2) establish requirements for a DAHS facility contracting with DADS to provide DAHS under Title XIX or Title XX of the Social Security Act.

§98.2. Definitions.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly or disabled person by the person's caretaker, family member, or other individual who has an ongoing relationship with the person, or sexual abuse of an elderly or disabled person, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Texas Penal Code,

§21.08, (indecent exposure) or Texas Penal Code, Chapter 22, (assaultive offenses) committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(2) Adult--A person 18 years of age or older, or an emancipated minor.

(3) Affiliate--With respect to a:

(A) partnership, each partner of the partnership ;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which the person is an officer, director, principal stockholder, or person with a disclosable interest.

(4) Ambulatory--Mobility not relying on walker, crutch, cane, other physical object, or use of wheelchair.

(5) Applicant--A person applying for a license under Texas Human Resources Code, Chapter 103.

(6) Authorization--A case manager's decision, before DAHS begins and before payment can be made, that DAHS may be provided to an individual.

(7) Case manager--A DADS employee who is responsible for DAHS case management activities. Activities include eligibility determination, individual enrollment, assessment and reassessment of an individual's need, service plan development, and intercession on the individual's behalf.

(8) Caseworker--Case manager.

(9) Client--Individual.

(10) Construction, existing--See definition of existing building.

(11) Construction, new--Construction begun after April 1, 2007.

(12) Construction, permanent--A building or structure that meets a nationally recognized building code's details for foundations, floors, walls, columns, and roofs.

(13) DADS--The Department of Aging and Disability Services or its successor agency.

(14) DAHS--Day activity and health services. Health, social, and related support services.

(15) DAHS facility--A facility that provides services under a day activity and health services program on a daily or regular basis, but not overnight, to four or more elderly persons or persons with disabilities who are not related by blood, marriage or adoption to the owner of the facility.

(16) DAHS program--A structured, comprehensive program offered by a DAHS facility that is designed to meet the needs of adults with functional impairments by providing DAHS in accordance with individual plans of care in a protective setting.

(17) Days--Calendar days, unless otherwise specified.

(18) Department--Department of Aging and Disability Services or its successor agency.

(19) Dietitian consultant--A registered dietitian; a person licensed by the Texas State Board of Examiners of Dietitians; or a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management.

(20) Direct service staff--An employee or contractor of a facility who directly provides services to individuals, including the director, a licensed nurse, the activities director, and an attendant. An attendant includes a driver, food service worker, aide, janitor, porter, maid, and laundry worker. A dietitian consultant is not a member of the direct service staff.

(21) Director--The person responsible for the overall operation of a facility.

(22) Elderly person--A person 65 years of age or older.

(23) Existing building--A building or portion thereof that, at the time of initial inspection by DADS, is used as an adult day care occupancy, as defined by Life Safety Code, NFPA 101, 2000 edition, Chapter 17 for existing adult day care occupancies; or has been converted from another occupancy or use to an adult day care occupancy, as defined by Chapter 16 for new adult day care occupancies.

(24) Exploitation--An illegal or improper act or process of a caretaker, family member, or other individual, who has an ongoing relationship with the elderly person or person with a disability, using the resources of an elderly person or person with a disability for monetary or personal benefit, profit, or gain without the informed consent of the elderly person or person with a disability.

(25) Facility--A licensed DAHS facility.

(26) Fence--A barrier to prevent elopement of an individual or intrusion by an unauthorized person, consisting of posts, columns, or other support members, and vertical or horizontal members of wood, masonry, or metal.

(27) FM--FM Global (formerly known as Factory Mutual). A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS.

(28) Fraud--A deliberate misrepresentation or intentional concealment of information to receive or to be reimbursed for service delivery to which an individual is not entitled.

(29) Functional impairment--A condition that requires assistance with one or more personal care services.

(30) Health assessment--An assessment of an individual by a facility used to develop the individual's plan of care.

(31) Health services--Services that include personal care, nursing, and therapy services.

(A) Personal care services include:

(i) bathing;

(ii) dressing;

(iii) preparing meals;

(iv) feeding;

(v) grooming;

(vi) taking self-administered medication;

(vii) toileting;

(viii) ambulation; and

(ix) assistance with other personal needs or maintenance.

(B) Nursing services may include:

(i) the administration of medications;

(ii) physician-ordered treatments, such as dressing changes; and

(iii) monitoring the health condition of the individual.

(C) Therapy services may include:

(i) physical;

(ii) occupational; and

(iii) speech therapy.

(32) Human services--Include the following services:

(A) personal social services, including:

(i) DAHS;

(ii) counseling;

(iii) in-home care; and

(iv) protective services;

(B) health services, including:

(i) home health;

(ii) family planning;

(iii) preventive health programs;

(iv) nursing facility; and

(v) hospice;

(C) education services, meaning:

(i) all levels of school;

(ii) Head Start; and

(iii) vocational programs;

(D) housing and urban environment services, including public housing;

(E) income transfer services, including;

(i) Temporary Assistance for Needy Families; and

(ii) Supplemental Nutrition Assistance Program; and

(F) justice and public safety services, including:

(i) parole and probation; and

(ii) rehabilitation.

(33) Human service program--An intentional, organized, ongoing effort designed to provide good to others. The characteristics of a human service program are:

(A) dependent on public resources and are planned and provided by the community;

(B) directed toward meeting human needs arising from day-to-day socialization, health care, and developmental experiences; and

(C) used to aid, rehabilitate, or treat people in difficulty or need.

(34) Individual--A person who applies for or is receiving services at a facility.

(35) Licensed vocational nurse (LVN)--A person licensed by the Texas Board of Nursing who works under the supervision of a registered nurse (RN) or a physician.

(36) Life Safety Code, NFPA 101--The Code for Safety to Life from Fire in Buildings and Structures, NFPA 101, a publication of the National Fire Protection Association, Inc. that:

(A) addresses the construction, protection, and occupancy features necessary to minimize danger to life from fire, including smoke, fumes, or panic; and

(B) establishes minimum criteria for the design of egress features so as to permit prompt escape of occupants from buildings or, where desirable, into safe areas within the building.

(37) Long-term care facility--A facility that provides care and treatment or personal care services to four or more unrelated persons, including:

(A) a nursing facility licensed under Texas Health and Safety Code, Chapter 242;

(B) an assisted living facility licensed under Texas Health and Safety Code, Chapter 247; and

(C) an intermediate care facility serving individuals with an intellectual disability or related conditions licensed under Texas Health and Safety Code, Chapter 252.

(38) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, and delivery of services. Management services do not include contracts solely for maintenance, laundry, or food services.

(39) Manager--A person having a contractual relationship to provide management services to a facility.

(40) Medicaid-eligible--An individual who is eligible for Medicaid.

(41) Medically related program--A human services program under the human services-health services category in the definition of human services in this section.

(42) Neglect--The failure to provide for one's self the goods or services, including medical services, that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caregiver to provide these goods or services.

(43) NFPA--The National Fire Protection Association. NFPA is an organization that develops codes, standards, recommended practices, and guides through a consensus standards development process approved by the American National Standards Institute.

(44) NFPA 10--Standard for Portable Fire Extinguishers. A standard developed by NFPA for the selection, installation, inspection, maintenance, and testing of portable fire extinguishing equipment.

(45) NFPA 13--Standard for the Installation of Sprinkler Systems. A standard developed by NFPA for the minimum requirements for the design and installation of automatic fire sprinkler systems, including the character and adequacy of water supplies and the selection of sprinklers, fittings, pipes, valves, and all maintenance and accessories.

(46) NFPA 70--National Electrical Code. A code developed by NFPA for the installation of electric conductors and equipment.

(47) NFPA 72--National Fire Alarm Code. A code developed by NFPA for the application, installation, performance, and maintenance of fire alarm systems and their components.

(48) NFPA 90A--Standard for the Installation of Air Conditioning and Ventilating Systems. A standard developed by NFPA for systems for the movement of environmental air in structures that serve spaces over 25,000 cubic feet or buildings of certain heights and construction types, or both.

(49) NFPA 90B--Standard for the Installation of Warm Air Heating and Air-Conditioning Systems. A standard developed by the NFPA for systems for the movement of environmental air in one- or two-family dwellings and structures that serve spaces not exceeding 25,000 cubic feet.

(50) NFPA 96--Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations. A standard developed by NFPA that provides the minimum fire safety requirements related to the design, installation, operation, inspection, and maintenance of all public and private cooking operations, except for single-family residential usage.

(51) Nurse--A registered nurse (RN) or a licensed vocational nurse (LVN) licensed in the state of Texas.

(52) Nursing services--Services provided by a nurse, including:

(A) observation;

(B) promotion and maintenance of health;

(C) prevention of illness and disability;

(D) management of health care during acute and chronic phases of illness;

(E) guidance and counseling of individuals and families; and

(F) referral to physicians, other health care providers, and community resources when appropriate.

(53) Person--An individual, corporation, or association.

(54) Person with a disclosable interest--A person who owns five percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Human Resources Code, Chapter 103. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(55) Person with a disability--A person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(56) Physician's orders--An order that is signed and dated by a medical doctor (MD) or doctor of osteopathy (DO) who is licensed to practice medicine in the state of Texas. The DADS physician's order form used by a DAHS facility that contracts with DADS must include the MD's or DO's license number.

(57) Plan of care--A written plan, based on a health assessment and developed jointly by a facility and an individual or the individual's responsible party, that documents the functional impairment of the individual and the DAHS needed by the individual.

(58) Protective setting--A setting in which an individual's safety is ensured by the physical environment by staff.

(59) Registered nurse (RN)--A person licensed by the Texas Board of Nursing to practice professional nursing.

(60) Related support services--Services to an individual, family member, or caregiver that may improve the person's ability to assist with an individual's independence and functioning. Services include:

(A) information and referral;

(B) transportation;

(C) teaching caregiver skills;

(D) respite;

(E) counseling;

(F) instruction and training; and

(G) support groups.

(61) Responsible party--A person designated by an individual as the individual's representative.

(62) Safety--Protection from injury or loss of life due to conditions such as fire, electrical hazard, unsafe building or site conditions, and the presence of hazardous materials.

(63) Sanitation--Protection from illness, the transmission of disease, or loss of life due to unclean surroundings, the presence of disease transmitting insects or rodents, unhealthful conditions or practices in the preparation of food and beverage, or the care of personal belongings.

(64) Semi-ambulatory--Mobility relying on a walker, crutch, cane, other physical object, or independent use of wheelchair.

(65) Serious injury--An injury requiring emergency medical intervention or treatment by medical personnel, either at a facility or at an emergency room or medical office.

(66) Social activities--Therapeutic, educational, cultural enrichment, recreational, and other activities in a facility or in the community provided as part of a planned program to meet the social needs and interests of an individual.

(67) UL--Underwriters Laboratories, Inc. A corporation whose approval of a product indicates a level of testing and certification that is acceptable to DADS.

(68) Working with people--Responsible for the delivery of services to individuals either directly or indirectly. Experience as a manager would meet this definition; however, an administrative support position such as a bookkeeper does not. Experience does not have to be in a paid capacity.

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

Filed with the Office of the Secretary of State on November 7, 2016.

TRD-201605742
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 438-2235

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §98.11

The amendments 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.

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

Filed with the Office of the Secretary of State on November 7, 2016.

TRD-201605743
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 438-2235

♦ ♦ ♦

SUBCHAPTER D. LICENSURE AND PROGRAM REQUIREMENTS

40 TAC §98.62

The amendments 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.

§98.62. Program Requirements.

(a) Staff qualifications.

(1) Director. A facility must employ a director.

(A) The director must:

(i) have graduated from an accredited four-year college or university and have no less than one year of experience in working with people in a human service or medically related program, or have an associate degree or 60 semester hours from an accredited college or university with three years of experience working with people in a human service or medically related program;

(ii) be an RN with one year of experience in a human service or medically related program;

(iii) meet the training and experience requirements for a license as a nursing facility administrator under Texas Administrative Code (TAC), Title 40, Chapter 18, Nursing Facility Administrators; or

(iv) have met, on July 16, 1989, the qualifications for a director required at that time and have served continuously in the capacity of director since that date.

(B) The director must show evidence of 12 hours of annual continuing education in at least two of the following areas:

(i) individual and provider rights and responsibilities, abuse, neglect, exploitation and confidentiality;

(ii) basic principles of supervision;

(iii) skills for working with individuals, families, and other professional service providers;

(iv) individual characteristics and needs;

(v) community resources;

(vi) basic emergency first aid, such as cardiopulmonary resuscitation (CPR) or choking; or

(vii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, and the Family and Medical Leave Act of 1993.

(C) The activities director may fulfill the function of director if the activities director meets the qualifications for facility director.

(D) One person may not serve as facility nurse, activities director, and director, regardless of qualifications.

(E) The facility must have a policy regarding the delegation of responsibility in the director's absence from the facility.

(F) The facility must notify the DADS regional office in which the facility is located if the director is absent from the facility for more than 10 working days.

(2) Nurse. A facility must employ a nurse.

(A) An RN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(B) An LVN must have a license from the Texas Board of Nursing and practice in compliance with the Nurse Practice Act and rules and regulations of the Texas Board of Nursing.

(C) If a nurse serving as director leaves the facility to perform other duties related to the DAHS program, an LVN or another RN must fulfill the duties of the facility nurse.

(D) A facility that does not have a DAHS contract, but has a Special Services to Persons with Disabilities contract, is not required to have an RN on duty, if the individual receiving services has no medical needs and is able to self-administer medication.

(3) Activities director. A facility must employ an activities director.

(A) Except as provided in subparagraph (B) of this paragraph, an activities director must have graduated from a high school or have a certificate recognized by a state of the United States as the equivalent of a high-school diploma and have:

(i) a bachelor's degree from an accredited college or university, and one year of full-time experience working with elderly people or people with disabilities in a human service or medically related program;

(ii) 60 semester hours from an accredited college or university, and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program; or

(iii) completed an activities director's course, and two years of full-time experience working with elderly people or people with disabilities in a human service or medically related program.

(B) An activities director hired before May 1, 1999, with four years of full-time experience working with elderly people or people with disabilities in a human service or medically related

program is not subject to the requirements of subparagraph (A) of this paragraph.

(4) Attendants. An attendant must be at least 18 years of age and may be employed as a driver, aide, cook, janitor, porter, housekeeper, or laundry worker.

(A) If a facility employs a driver, the driver must have a current operator's license, issued by the Texas Department of Public Safety, which is appropriate for the class of vehicle used to transport individuals.

(B) If an attendant handles food in the facility, the attendant must meet requirements of the Department of State Health Services rules on food service sanitation as described in 25 TAC, Chapter 228, Subchapters A - J (relating to Texas Food Establishments).

(5) Food service personnel. If a facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements of the Department of State Health Services rules on food service sanitation as described in 25 TAC, Chapter 228, Subchapters A - J (relating to Texas Food Establishments).

(6) Additional requirements for a facility that contracts with DADS.

(A) Housekeeper. A facility that contracts with DADS may employ a part-time or full-time housekeeper.

(B) Driver. If a facility that contracts with DADS employs a driver, the driver must:

(i) operate the facility's vehicles in a safe manner; and

(ii) maintain adult cardiopulmonary resuscitation (CPR) certification.

(b) Staffing. A facility must ensure that:

(1) the ratio of direct service staff to individuals is at least one to eight, which must be maintained during provision of all DAHS except during facility-provided transportation;

(2) at least one RN or LVN is working at the facility for at least eight hours per day and sufficient nurses are at the facility to meet the nursing needs of the individuals at all times;

(3) the facility director routinely works at least 40 hours per week performing duties relating to the provision of the DAHS program;

(4) the activities director routinely works at least 40 hours a week;

(5) individuals whose needs cannot be met by the facility are not admitted or retained; and

(6) sufficient staff are on duty at all times to meet the needs of the individuals who are served by the facility.

(c) Staff health. All direct service staff must be free of communicable diseases.

(1) A facility must screen all employees for tuberculosis within two weeks of employment and annually, according to Center for Disease Control and Prevention (CDC) screening guidelines. All persons providing services under an outside resource contract must also screen all employees for tuberculosis within two weeks of employment and annually according to CDC screening guidelines.

(2) If an employee contracts a communicable disease that is transmissible to individuals through food handling or direct individual care, the facility must exclude the employee from providing these services while the employee is infectious.

(d) Staff responsibilities.

(1) The facility director:

(A) manages the DAHS program and the facility;

(B) trains and supervises facility staff;

(C) monitors the facility building and grounds to ensure compliance;

(D) maintains all financial and individual records;

(E) develops relationships with community groups and agencies for identification and referral of individuals;

(F) maintains communication with an individual's family members or responsible parties;

(G) assures the development and maintenance of the individual's plan of care; and

(H) ensures that, if the facility director serves as the RN consultant, the facility director fulfills the responsibility as director.

(2) The facility nurse:

(A) assesses an individual's nursing and medical needs;

(B) develops an individual's plan of care;

(C) obtains physician's orders for medication and treatments to be administered;

(D) determines whether self-administered medications have been appropriately taken, applied, or used;

(E) enters, dates, and signs monthly progress notes on medical care provided;

(F) administers medication and treatments;

(G) provides health education; and

(H) maintains medical records.

(3) The activities director:

(A) plans and directs the daily program of activities, including physical fitness exercises or other recreational activities;

(B) records the individual's social history;

(C) assists the individual's related support needs;

(D) assures that the identified related support services are included in the individual's plan of care; and

(E) signs and dates monthly progress notes about social and related support services activities provided.

(4) An attendant:

(A) provides personal care services to assist with activities of daily living;

(B) assists the activities director with recreational activities; and

(C) provides protective supervision through observation and monitoring.

(5) Food service personnel:

(A) prepare meals and snacks; and

(B) maintain the kitchen area and utensils in a safe and sanitary condition.

(6) A facility must obtain consultation at least four hours per month from a dietitian consultant.

(A) The dietitian consultant plans and reviews menus and must:

(i) approve and sign snack and luncheon menus;

(ii) review menus monthly to ensure that substitutions were appropriate; and

(iii) develop a special diet for an individual, if ordered by a physician.

(B) A facility must obtain consultation from a dietitian consultant, even if the facility has meals delivered from another facility with a dietitian consultant or the facility contracts for the preparation and delivery of meals with a contractor that employs a registered dietician. A consultant who provides consultation to several facilities must provide at least four hours of consultation per month to each facility.

(7) If a facility employs an LVN as the facility nurse, the facility must ensure that an RN consultant provides consultation at the facility at least four hours per week. The RN consultant must document the consultation provided. The RN consultant must provide the consultation when individuals are present in the facility. The RN consultant may provide the following types of assistance:

(A) review plans of care and suggest changes, if appropriate;

(B) assess individuals' health conditions;

(C) consult with the LVN in solving problems involving care and service planning;

(D) counsel individuals on health needs;

(E) train, consult, and assist the LVN to maintain proper medical records; and

(F) provide in-service training for direct service staff.

(e) Training.

(1) Initial training.

(A) A facility must:

(i) provide direct service staff with training in the fire, disaster, and evacuation procedures within three workdays after the start of employment and document the training in the facility records; and

(ii) provide direct service staff a minimum of 18 hours of training during the first three months after the start of employment and document the training in the facility records.

(B) The training provided in accordance with subparagraph (A)(ii) of this paragraph must include:

(i) any nationally or locally recognized adult CPR course or certification;

(ii) first aid; or

(iii) orientation to health care delivery, including the following topics:

(I) safe body function and mechanics;

(II) personal care techniques and procedures; and

(III) overview of the population served at the facility; and

(iv) identification and reporting of abuse, neglect, or exploitation.

(2) Ongoing training.

(A) A facility must provide at least three hours of ongoing training to direct service staff quarterly. The facility must ensure that direct delivery staff maintain current certification in CPR.

(B) A facility must practice evacuation procedures with staff and individuals at least once a month. The facility must document evacuation results in the facility records.

(f) Medications.

(1) Administration.

(A) A facility must ensure that a person who holds a current license under state law that authorizes the licensee to administer medications to individuals who choose not to or cannot self-administer their medications.

(B) A facility must ensure that all medication prescribed to an individual that is administered at the facility is dispensed through a pharmacy or by the individual's treating physician or dentist.

(C) A facility may administer physician sample medications at the facility if the medication has specific dosage instructions for the individual.

(D) A facility must record an individual's medications on the individual's medication profile record. The recorded information must be obtained from the prescription label and must include the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) Assistance with self-administration. A nurse may assist with self-administration of an individual's medication if the individual is unable to administer the medication without assistance. Assistance with self-administration of medication is limited to the following activities:

(A) reminding an individual to take medications at the prescribed time;

(B) opening and closing containers or packages;

(C) pouring prescribed dosage according to the individual's medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual's medication profile record the medication name, strength, dosage, amount received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) A nurse must counsel an individual who self-administers medication or treatment at least once per month to ascertain if the individual continues to be able to self-administer the medication or treatment. The facility must keep a written record of the counseling.

(B) A facility may permit an individual who chooses to keep the individual's medication locked in the facility's central medication storage area to enter or have access to the area for the purpose of self-administering medication or treatment. A facility staff member

must remain in or at the storage area the entire time the individual is present.

(4) General.

(A) A facility director, an activities director, or a facility nurse must immediately report to an individual's physician and responsible party any unusual reactions to a medication or treatment.

(B) When a facility supervises or administers medications, the facility must document in writing if an individual does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed.

(5) Storage.

(A) A facility must provide a locked area for all medications, which may include:

(i) a central storage area; and

(ii) a medication cart.

(B) A facility must store an individual's medication separately from other individuals' medications within the storage area.

(C) A facility must store medication requiring refrigeration in a locked refrigerator that is used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.

(D) A facility must store poisonous substances and medications labeled for "external use only" separately within the locked area.

(E) A facility must store drugs covered by Schedule II of the Controlled Substances Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(6) Disposal.

(A) A facility must keep medication that is no longer being used by an individual for the following reasons separate from current medications and ensure the medication is disposed of by a registered pharmacist licensed in the State of Texas:

(i) the medication has been discontinued by order of the physician;

(ii) the individual is deceased; or

(iii) the expiration date of the medications has passed.

(B) A facility must dispose of needles and hypodermic syringes with needles attached as required by 25 TAC , Chapter 1, Subchapter K (relating to the Definition, Treatment, and Disposal of Special Waste from Health Care Related Facilities).

(C) A facility must obtain a signed receipt from an individual or the individual's responsible party if the facility releases medication to the individual or responsible party.

(g) Accident, injury, or acute illness.

(1) A facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(2) In the event of accident or injury to an individual requiring emergency medical, dental, or nursing care, or in the event of death of an individual, a facility must:

(A) make arrangements for emergency care or transfer to an appropriate place for treatment, including:

(i) a physician's office;

(ii) a clinic; or

(iii) a hospital;

(B) immediately notify an individual's physician and responsible party, or agency who admitted the individual to the facility; and

(C) describe and document the accident, injury, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(h) Menus.

(1) A facility must plan, date, and post a menu at least two weeks in advance and maintain a copy of the menu. A facility must serve meals according to approved menus.

(2) A facility must ensure that a special diet meal ordered by an individual's physician and developed by the dietician consultant is labeled with the individual's name and type of diet.

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

Filed with the Office of the Secretary of State on November 7, 2016.

TRD-201605744
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 438-2235

SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §98.200

The new section 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.

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

Filed with the Office of the Secretary of State on November 7, 2016.

TRD-201605745

Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: December 1, 2016
Proposal publication date: July 22, 2016
For further information, please call: (512) 438-2235

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Subchapter A, Motor Vehicle Titles: §217.3, Motor Vehicle Titles; Subchapter B, Motor Vehicle Registration: §217.28, Vehicle Registration Renewal; §217.40, Special Registrations; §217.42, Construction Machinery Criteria; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.47, Vehicle Emissions Enforcement System; §217.52, Marketing of Specialty License Plates through a Private Vendor; §217.54, Registration of Fleet Vehicles; and §217.56, Registration Reciprocity Agreements; Subchapter D, Non-repairable and Salvage Motor Vehicles: §217.82, Definitions; §217.84, Application for Non-repairable or Salvage Vehicle Title; and §217.86, Dismantling, Scrapping, or Destruction of Motor Vehicles; Subchapter E, Title Liens and Claims: §217.103, Restitution Liens; and Subchapter H, Deputies: §217.163, Full Service Deputies, without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7444). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

These nonsubstantive amendments throughout Chapter 217, Subchapters A, B, D, E, and H correct statutory and rule citations, correct one error, and update rule language; and allow for consistency with capitalization and style throughout department rules.

SECTION BY SECTION ANALYSIS

The amendment to §217.3(2)(A) adds quotes to the term "motor vehicle." The amendments to §217.3(4)(C) change the word "forty" to the numeral "40." The amendments also delete the word "body" from §217.3(4)(C)(i) for consistency with the language in §217.3(4)(C)(ii).

The amendment to §217.28(e)(2) changes the word "percent" to the symbol "%" for consistency with other sections within the chapter. The amendment to §217.28(e)(3) changes the word "twelve" to the numeral "12."

The amendments to §217.40(b)(1)(C) change the word "percent" to the symbol "%" in four instances. The amendments also change the word "semi-trailers" to "semitrailers" for consistency with statute.

The amendment to §217.42 changes "$5.00" to "$5."

The amendments to §217.45 change "Board" to "board" multiple times for consistency.

The amendment to §217.47 updates an incorrect statutory citation to the Health and Safety Code.

The amendments to §217.52 change "Board" to "board" multiple times and change the word "twenty-four" to the numeral "24."

The amendments to §217.54 change "semi-trailers" to "semitrailers" for consistency with statute and change the word "twenty-five" to the numeral "25" in three instances.

The amendments to §217.56 change the word "semi-trailer" to "semitrailer" in three instances and change "Board" to "board" throughout.

The amendment to §217.82 corrects the citation for the definition of "motor vehicle" in Transportation Code, Chapter 501.

The amendments in §217.84 update incorrect statutory citations to the Transportation Code.

The amendment to §217.86 updates an incorrect rule citation.

The amendment to §217.103(e) changes "$5.00" to "$5" for consistency. The proposed amendment to §217.103(g) corrects the section title of §217.106.

The amendments to §217.163(a) update incorrect references to subsection (j) due to the addition of a subsection during adoption of the rule that resulted in a renumbering of the subsections and also updates the reference to an agreement to an addendum to reflect the rule language as adopted.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605782

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: December 4, 2016
Proposal publication date: November 25, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.28, 217.40, 217.42, 217.45, 217.47, 217.52, 217.54, 217.56

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605802
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: December 4, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.82, 217.84, 217.86

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605803
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: December 4, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER E. TITLE LIENS AND CLAIMS

43 TAC §217.103

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605804
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: December 4, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER H. DEPUTIES

43 TAC §217.163

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Health and Safety Code, §382.202 and §382.203; and Transportation Code, §§501.002, 501.091, 501.1001, and 501.1002.

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

Filed with the Office of the Secretary of State on November 14, 2016.

TRD-201605805
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: December 4, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.9

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Subchapter A, §217.9, Bonded Titles. The amendment is adopted with changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7467). The rule will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

A person who has an interest in a motor vehicle in which the department has refused to issue a title or has suspended or revoked a title under Transportation Code, §501.051, may, under certain conditions, obtain a title to the motor vehicle by filing a bond with the department.

Amendment to §217.9(c)(3) clarifies the value of the bond. If the motor vehicle is 25 years or older and the appraised value is less than $4,000, then the bond amount will be established from a value of $4,000.

Amendment to §217.9(e)(1) clarifies the documentation required to apply for a bonded title. The verification of the vehicle identification number (VIN) must be on a form specified by the department as well as proof of the vehicle identification number inspection as proposed in §217.9(d).

COMMENTS

The department received comments from the Texas Department of Public Safety (DPS), the Galveston County Auto Theft Task Force, the Harris County Auto Theft Unit, the South Plains Auto Theft Task Force, the Montgomery County Auto Theft Task Force, the North Texas Auto Theft Task Force, the Tarrant Regional Auto Crimes Task Force, the Travis County Sheriff's Office Combine Auto Theft Task Force, Burnet County, the City of El Paso, the City of Mansfield, the City of Victoria, the Williamson County Sheriff's Office, and the Galveston County Sheriff's Office.

COMMENT - Vehicle Inspections

The (DPS), the Galveston County Sheriff's Office and the City of El Paso requested the Federal Bureau of Investigation (FBI) be removed as an agency who is authorized to complete the vehicle inspection identification form because the FBI offices do not provide this service.

RESPONSE

The department believes that the issue of specifying which individuals may perform VIN inspections warrants additional evaluation and study, and recommends leaving the existing rule language unchanged.

COMMENT- Vehicle Inspection Stations

Most of the comments were concerned with allowing vehicle inspection stations to conduct VIN verifications for bonded titles.

Galveston County Auto Theft Task Force noted that vehicle inspection stations are not trained and do not have access to C-vin locations.

The Harris County Sheriff's Office Auto Theft Unit, opposes allowing any civilian entity or person from completing a vehicle identification number inspection for a bonded title other than investigators assigned to a law enforcement auto theft unit.

The South Plains Auto Theft Task Force commented that only properly trained auto theft investigators should be conducting VIN inspections. Training and certification for these complex inspections safeguards against fraud, altered VIN's and cloned vehicles.

The Montgomery County Sheriff's Office, Montgomery County Auto Theft Task Force stated that safety inspection stations should not be allowed to conduct the VIN inspection for a bonded title, as this may lead to inappropriate behavior on the

station's part and may cause bonded titles to be issued on vehicles without the VIN being properly vetted.

The North Texas Auto Theft Task Force recommended that the language that would allow an inspection station to verify a VIN be removed, as VIN verification should be performed by the National Insurance Crime Bureau (NICB), FBI, or local law enforcement auto theft unit in order to preserve the integrity of the process.

The Tarrant Sheriff's Office, Regional Auto Crimes Task Force opposes the rule change stating that for bonded titles all vehicles should be required to have a physical inspection by a law enforcement officer specialized in the field of auto theft. The inspection should not rely on the verification by a Texas licensed safety inspection station, as documents can be forged or manipulated.

The Travis County Sheriff's Office, Sheriff's Combined Auto Theft Task Force expressed concern that removing the certified auto theft investigators opens up the field to any auto theft unit to be able to certify a 68A without the proper training. They also express concern that the text "a form specified by the department" is not clear and that this would cause the process of bonded title vehicles to slip through the process of proper inspections.

Burnet County expressed concern that many vehicles that persons seek to obtain a bonded title on are more than 35 years old and have an identification number that does not conform to current standards. Investigators assigned to an auto theft unit either have the knowledge or the resources to contact in determining the correct identification number to utilize and also to determine the validity of the identification numbers located. It is not a question of the knowledge or expertise of a safety inspector, but rather the training or resources available to the inspector as it relates to altered or obliterated numbers.

The Williamson County Sheriff's Office commented that vehicle safety inspectors should not be inspecting VINs on bonded titles, as they do not have access to the purged and stolen files that auto theft investigators have, and are not knowledgeable about public, secondary, and confidential VINs.

The City of Mansfield commented that certified Safety Inspection Stations should not be allowed to verify the VIN, as this will allow stations to be bribed and commit fraud.

RESPONSE

Transportation Code, Section 501.030 requires the vehicle to pass a vehicle safety inspection which includes a VIN verification if the vehicle is from out-of-state. The VIN verification is completed on the inspection station's report and verified by the department by using the DPS Vehicle Inspection Report. The department assumes the vehicle is from out-of-state if there is no record of the vehicle in its system. In some situations, these vehicles may be exempt from the vehicle safety inspection requirement; therefore, an alternative VIN inspection is necessary. The law enforcement VIN inspection is the alternative. Law enforcement, and only law enforcement, verifies the VIN on the Form VTR-68-A and this form is not used by anyone not specifically authorized on that form to complete that form. The department does not believe the most restrictive form of a VIN inspection is necessary to verify the VIN of these vehicles, when the inspection is not required for all other vehicles entering from out-of-state. Further, requiring a law enforcement VIN inspection would result in a substantial increase in these inspections and unduly burden law enforcement.

COMMENT

The City of Victoria stated they do not see any issues with the proposed rule change.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 501 and 520, and §§502.041, 502.042, and 502.192.

§217.9. Bonded Titles.

(a) Who may file. A person who has an interest in a motor vehicle to which the department has refused to issue a title or has suspended or revoked a title may request issuance of a title from the department on a prescribed form if the vehicle is in the possession of the applicant; and

(1) there is a record that indicates a lien that is less than ten years old and the surety bonding company ensures lien satisfaction or release of lien;

(2) there is a record that indicates there is not a lien or the lien is ten or more years old; or

(3) the department has no previous motor vehicle record.

(b) Administrative fee. The applicant must pay the department a $15 administrative fee in addition to any other required fees.

(c) Value. The amount of the bond must be equal to one and one-half times the value of the vehicle as determined using the Standard Presumptive Value (SPV) from the department's Internet website. If the SPV is not available, then a national reference guide will be used. If the value cannot be determined by either source, then the person may obtain an appraisal.

(1) The appraisal must be on a form specified by the department from a Texas licensed motor vehicle dealer for the categories of motor vehicles that the dealer is licensed to sell or a Texas licensed insurance adjuster who may appraise any type of motor vehicle.

(2) The appraisal must be dated and be submitted to the department within 30 days of the appraisal.

(3) If the motor vehicle is 25 years or older and the appraised value of the vehicle is less than $4,000, then the bond amount will be established from a value of $4,000.

(d) Vehicle identification number inspection. If the department has no motor vehicle record for the vehicle, the vehicle identification number must be verified by a Texas licensed Safety Inspection Station or a law enforcement officer who holds an auto theft certification.

(e) Required documentation. An applicant may apply for a bonded title if the applicant submits:

(1) verification of the vehicle identification number on a form specified by the department;

(2) any evidence of ownership;

(3) the original bond within 30 days of issuance;

(4) the rejection letter within one year of issuance and the receipt for $15 paid to the department;

(5) the documentation determining the value of the vehicle;

(6) proof of the vehicle identification number inspection, as described in subsection (d) of this section, if the department has no motor vehicle record for the vehicle;

(7) a weight certificate if there is no title or the vehicle is an out-of-state commercial vehicle;

(8) a certification of lien satisfaction by the surety bonding company or a release of lien if the rejection letter states that there may be a lien less than ten years old; and

(9) any other required documentation and fees.

(f) Report of Judgment. The bond must require that the surety report payment of any judgment to the department within 30 days.

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

Filed with the Office of the Secretary of State on November 10, 2016.

TRD-201605784
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: November 30, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.57

The Texas Department of Motor Vehicles (department) adopts new §217.57, Alternatively Fueled Vehicles, without changes to the proposed text as published in the September 23, 2016, issue of the *Texas Register* (41 TexReg 7469). The rule will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

New §217.57 is adopted to implement House Bill 735, 84th Legislature, Regular Session, 2015, regarding the collection of information on the number of alternatively fueled vehicles registered in this state. House Bill 735 added Transportation Code, §502.004, Information on Alternatively Fueled Vehicles, which requires the department, by rule, to establish a program to collect information about the number of alternatively fueled vehicles in this state. Section 502.004 also requires the department to submit an annual report to the legislature that includes the information collected, including, at a minimum, the number of vehicles that use electric plug-in drives, hybrid electric drives, compressed natural gas drives, and liquefied natural gas drives.

COMMENTS

The department received a comment on the proposed rules from Plug-In Texas. Plug-In Texas suggested that hydrogen fuel cell drive vehicles (HFCVs) be added to the engine type collected and reported by the department. The rule language is intentionally broad to encompass different vehicle fuel type information as that information is available to the department. Transportation Code, §502.004, defines "alternatively fueled vehicle" as "a motor vehicle that is capable of using a fuel other than gasoline or diesel fuel." The statute requires, at a minimum, a report on registered vehicles that use electric plug-in drives, hybrid electric drives, compressed natural gas drives, and liquefied natural gas drives. The department intends to use vehicle identification number (VIN) decoding software to collect the data and compile for the report. So long as a VIN continues to contain characters indicating utilization of hydrogen as a fuel type, the department will include this information in its report. As such, the department does not believe the rule requires amendment in order to collect and report on vehicles that use HFCVs.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §502.004, which requires the department to establish a program, by rule, about the number of alternatively fueled vehicles registered in this state.

CROSS REFERENCE TO STATUTE

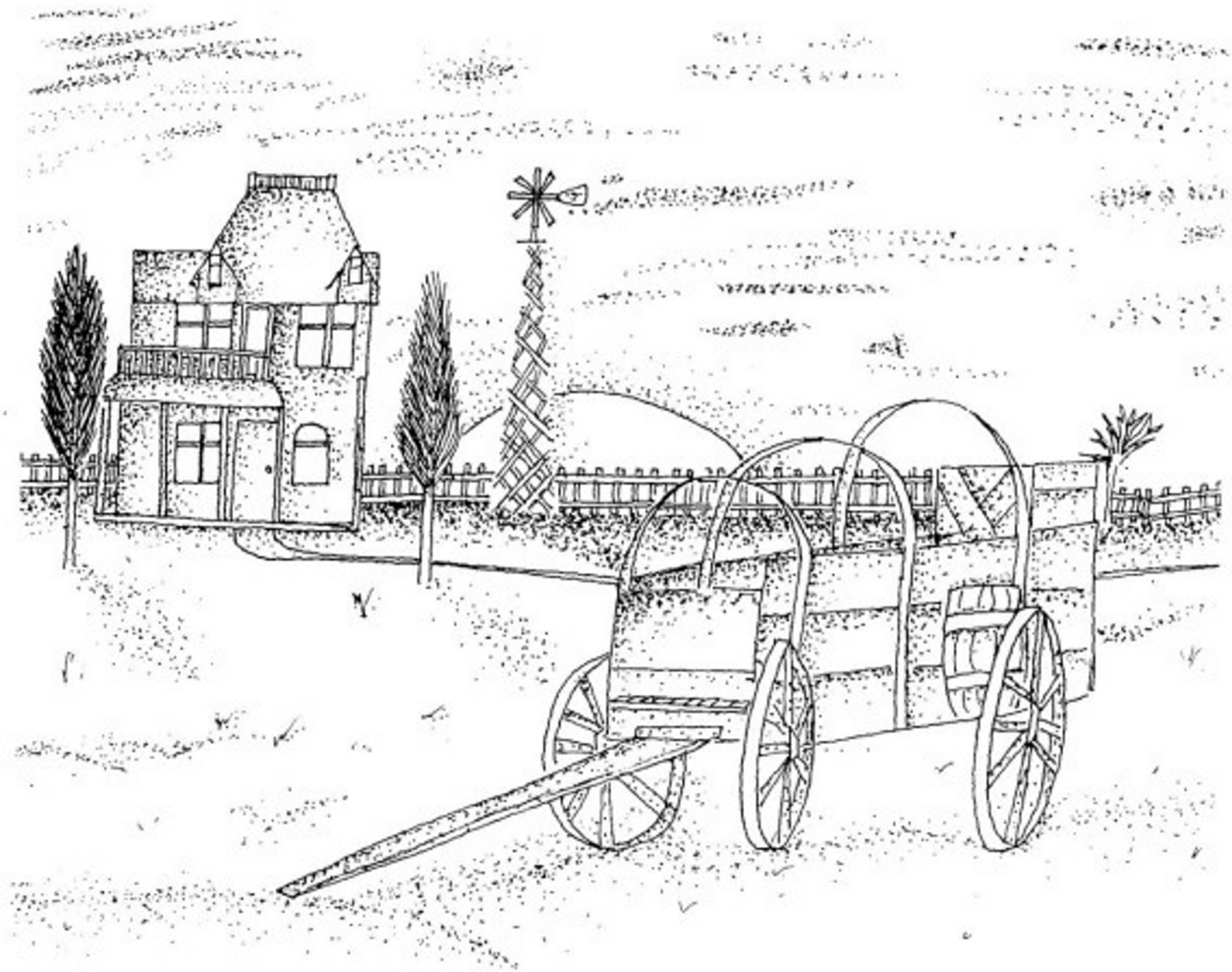
Transportation Code, §§501.021, 502.040, and 502.043.

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

Filed with the Office of the Secretary of State on November 10, 2016.

TRD-201605781
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: November 30, 2016
Proposal publication date: September 23, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Higher Education Coordinating Board

Rule Transfer

The Texas Higher Education Coordinating Board (THECB) is transferring 19 TAC Chapter 21, Subchapters G, J, P, R, S, U, W, X and KK to 19 TAC Chapter 23, Subchapters B, C, D, E, F, G, H, I and J. The administrative transfer will allow THECB to better catalogue the rules for educational loan repayment programs and does not affect the content of the rules.

The transfer takes effect December 15, 2016.

The following table outlines the rule transfer:

Figure: 19 TAC Chapter 21

Figure: 19 TAC Chapter 21

Current Chapter 21. Student Services	New Chapter 23. Education Loan Repayment Programs
Subchapter G 19 TAC §§21.171-21.176	Subchapter B 19 TAC §§23.31-23.36
Subchapter J 19 TAC §§21.251-21.262	Subchapter C 19 TAC §§23.62-23.73
Subchapter P 19 TAC §§21.490-21.498	Subchapter D 19 TAC §§23.93-23.101
Subchapter R 19 TAC §§21.560-21.566	Subchapter E 19 TAC §§23.124-23.130
Subchapter S 19 TAC §§21.590-21.596	Subchapter F 19 TAC §§23.155-23.161
Subchapter U 19 TAC §§21.630-21.638	Subchapter G 19 TAC §§23.186-23.194
Subchapter W 19 TAC §§21.710-21.716	Subchapter H 19 TAC §§23.217-23.223
Subchapter X 19 TAC §§21.730-21.737	Subchapter I 19 TAC §§23.248-23.255
Subchapter KK 19 TAC §§21.2021-21.2029	Subchapter J 19 TAC §§23.286-23.294

TRD-201605856

♦ ♦ ♦

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 State Board of Plumbing Examiners

Title 22, Part 17

In accordance with Texas Government Code §2001.039, the Texas State Board of Plumbing Examiners (Board) files this notice of its intent to review Texas Administrative Code, Title 22, Part 17, Chapter 361, concerning Administration. An assessment will be made by the Board as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Any proposed amendments or repeal of a rule as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

Written comments regarding whether the reasons for adopting or readopting these rules continue to exist may be submitted by mail to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; or by email to info@tsbpe.texas.gov with the subject line "Rule Review." All comments must be received by 5 p.m. on December 19, 2016.

TRD-201605852
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Filed: November 15, 2016

♦ ♦ ♦

In accordance with Texas Government Code §2001.039, the Texas State Board of Plumbing Examiners (Board) files this notice of its intent to review Texas Administrative Code, Title 22, Part 17, Chapter 363 concerning Examination and Registration. An assessment will be made by the Board as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Any proposed amendments or repeal of a rule as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

Written comments regarding whether the reasons for adopting or readopting these rules continue to exist may be submitted by mail to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; or by email to info@tsbpe.texas.gov with the subject line "Rule Review." All comments must be received by 5 p.m. on December 19, 2016.

TRD-201605854
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Filed: November 15, 2016

♦ ♦ ♦

In accordance with Texas Government Code §2001.039, the Texas State Board of Plumbing Examiners (Board) files this notice of its intent to review Texas Administrative Code, Title 22, Part 17, Chapter 365 concerning Licensing and Registration. An assessment will be made by the Board as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Any proposed amendments or repeal of a rule as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

Written comments regarding whether the reasons for adopting or readopting these rules continue to exist may be submitted by mail to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; or by email to info@tsbpe.texas.gov with the subject line "Rule Review." All comments must be received by 5 p.m. on December 19, 2016.

TRD-201605853
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Filed: November 15, 2016

♦ ♦ ♦

In accordance with Texas Government Code §2001.039, the Texas State Board of Plumbing Examiners (Board) files this notice of its intent to review Texas Administrative Code, Title 22, Part 17, Chapter 367 concerning Enforcement. An assessment will be made by the Board as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Board.

Any proposed amendments or repeal of a rule as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

Written comments regarding whether the reasons for adopting or readopting these rules continue to exist may be submitted by mail to Lisa Hill, Executive Director, at P.O. Box 4200, Austin, Texas 78765-4200; or by email to info@tsbpe.texas.gov with the subject line "Rule Review." All comments must be received by 5 p.m. on December 19, 2016.

TRD-201605855
Lisa Hill
Executive Director
Texas State Board of Plumbing Examiners
Filed: November 15, 2016

♦ ♦ ♦

Adopted Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 16, Part 2, Chapter 22, Procedural Rules, as required by the Texas Government Code §2001.039, *Agency Review of Existing Rules,* as noticed in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3530). The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov. Project No. 45856, *Rule Review of Chapter 22, Procedural Rules, Pursuant to Texas Government Code §2001.039,* is assigned to this rule review project.

Texas Government Code §2001.039 requires that each state agency review and re-adopt, re-adopt with amendments, or repeal the rules adopted by that agency under Texas Government Code, chapter 2001, subchapter B, Rulemaking. As required by §2001.039(e), this review is to assess whether the reasons for adopting or re-adopting the commission's chapter 22, Procedural Rules, continue to exist. The commission requested specific comments from interested persons on whether the reasons for adopting each section in chapter 22 continue to exist. In addition, the commission welcomed comments on any modifications that would improve the rules.

The commission's chapter 22 rules govern the initiation, conduct, and determination of proceedings required or permitted by law, including proceedings referred to the State Office of Administrative Hearings, whether instituted by order of the commission or by the filing of an application, including a complaint, petition, or any other pleading.

The commission finds that the reasons for adopting chapter 22, Procedural Rules, continue to exist and re-adopts these rules without amendments. These procedural rules provide a written system of procedures for practice before the commission, furthering the just and efficient disposition of proceedings, as well as public participation in the decision-making process.

The commission received initial comments on the notice of intention to review from Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, El Paso Electric Company, Electric Transmission Texas, LLC, and Sharyland Utilities, L.P. (collectively, the "Joint Utilities"); Central Telephone Company of Texas, Inc. d/b/a CenturyLink, United Telephone Company of Texas, Inc. d/b/a CenturyLink, CenturyTel of San Marcos, Inc. d/b/a CenturyLink, CenturyTel of Lake Dallas, Inc. d/b/a CenturyLink, CenturyTel of Port Aransas, Inc. d/b/a CenturyLink, and CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink (collectively, "CenturyLink"); and the Texas Telephone Association (TTA). The commission received reply comments from the City of Houston (Houston). While there were some suggestions for modifications to specific chapter 22 rules, no party questioned the continued need for the rules. The parties' comments are summarized by commenter and the commission response addressing these comments is set forth at the end of the summaries.

Summary of comments

AT&T recommended that the rules contained in chapter 22 be readopted. AT&T also requested that the commission initiate separate rulemaking proceedings to amend chapter 22 consistent with AT&T's proposed modifications.

AT&T urged the commission to reconsider modifications to §22.101(a) to ensure that non-attorneys do not engage in the practice of law as defined by the Texas Government Code. AT&T argued that the need to modify §22.101(a) to require an authorized representative in contested cases to be a licensed attorney has been an issue since at least 2008 and that modification is further supported by Texas Attorney General Opinion No. GA-0936.

AT&T stated that, under current commission rules, anybody--not just a pro se individual or an attorney--can appear before the commission to represent a party in any proceeding. AT&T contended that this rule conflicts with restrictions on the unauthorized practice of law in contested case proceedings. AT&T argued that §22.101(a) conflicts with §81.102(a) of the Texas Government Code and that the rule is therefore subject to invalidation and should be modified to conform to Texas law.

AT&T recommended modifying the rule so that contested case proceedings would require representation by an attorney authorized to practice law in Texas. AT&T's recommended language would include an exception for individuals who choose to represent themselves pro se in contested case proceedings. Under AT&T's recommendation, the current rule would remain in effect for all proceedings not involving a contested case.

AT&T recommended that a clause be added to §22.3(a) prohibiting a person appearing in an administrative hearing before the commission from *knowingly making false, misleading, or abusive statements in pleadings or commission proceedings or using threatening, obscene, or vulgar language in pleadings or communications between or among the parties.* AT&T argued that this modification is necessary because non-lawyers appearing before the commission are not bound by the Texas Disciplinary Rules of Professional Conduct but are bound by the general standards of conduct imposed by the commission's Procedural Rules.

To promote efficiency and lessen the administrative burden on parties and the commission, AT&T proposed that the commission provide an option for parties to comply with filing requirements by filing a complete original electronic copy of pleadings rather than filing multiple paper copies. Alternatively, AT&T requested that the commission reduce, to the extent possible, the number of paper copies required under §22.71(c).

AT&T recommended that §22.72(e) be modified to include a requirement that the person signing the pleading or document also provide his or her e-mail address, since, as AT&T argued, the overwhelming majority of today's communication between parties is done electronically. AT&T stated that this would be consistent with what is already required by §21.33(e).

AT&T recommended that §22.74(b) be amended to permit service by email as a method of service. AT&T stated that this change would be consistent with the SOAH procedural rules and would bring the commission's rules in line with the parties' current practice of agreeing to service of filings through electronic means. AT&T also proposed that these rules be modified to accept email sent messages or an email delivery certificate as *prima facie* evidence of the facts shown thereon related to service.

AT&T requested that a sentence be added to §22.77(c) to prohibit the presiding officer from ruling on a motion before the expiration of the time for response allotted unless the motion states that it is unopposed or an emergency situation exists.

AT&T requested that §22.123(a)(2) be clarified to provide that the date of issuance of the order is the date that the presiding officer signs it. AT&T stated that there have been occasions where an order was signed on one day and filed on another, which can possibly lead to confusion. AT&T further requested that these rules be modified to permit a motion for clarification or reconsideration and an appeal of a presiding officer's interim order or appealable oral ruling to be served on all parties by email.

AT&T requested that §22.144(b)(2) be modified to permit requests for information to be served on all parties by email.

AT&T requested that §22.144 be modified to eliminate the requirement to file responses to discovery requests. AT&T noted that this change would be consistent with SOAH's procedural rules, which require that discovery responses be served on the requesting party but not filed. AT&T further requested that §22.144(c)(2)(F) be modified to require that the responding party--not the authorized representative or attorney--make and sign responses to requests for information, but not responses to requests for production or requests for admission.

AT&T recommended that the time period for objections be changed from its current length of 10 calendar days to 20 calendar days to coincide with the time period for responding to requests for information. AT&T argued that such a change would make the commission's time period for objections mirror that established in the Texas Rules of Civil Procedure (TRCP). AT&T also argued that this change would not elongate the discovery process, as it would not affect the deadline for responding to discovery requests. AT&T also argued that this change could substantially reduce discovery disputes and objections by eliminating the need for parties to make precautionary objections to discovery requests when the 10 day deadline to object does not provide sufficient time for a party to determine what its answer to the request will be, and thus whether an objection is merited. AT&T also argued that this change would provide parties additional time to resolve discovery disputes, thereby reducing the need for the presiding officer to resolve discovery disputes.

AT&T requested that §22.144, specifically those provisions having to do with privilege logs, be modified to mirror the rule for asserting a privilege in Texas' district courts, TRCP Rule 193.3. AT&T stated that, unlike the commission's rule, TRCP Rule 193.3 does not require parties to automatically file an index of documents alleged to be privileged in each and every instance. Instead, parties asserting a privilege in state court are simply required to indicate in their response or in a separate document that information or documents have been withheld and what privilege is being asserted. AT&T argued that parties in commission proceedings already routinely agree to waive the index requirement and rarely bring disputes over privileged documents to the commission's attention.

If the commission were to adopt AT&T's recommendation to lengthen the time period for objections to discovery requests, AT&T further recommended that the current requirement to file motions to compel within five working days of the receipt of the objection be changed to 10 calendar days from the receipt of the objection. AT&T argued that this modification would allow the parties needed additional time to review objections and responses to discovery requests given that objections and responses would be received simultaneously under AT&T's proposed revisions.

AT&T recommended that the list of sanctionable conduct set forth in §22.161(b) also include a failure to comport with the standards of conduct for parties set forth in §22.3(a).

The Joint Utilities requested that the commission amend its procedural rules to promote and provide opportunity for early settlement and use of alternative dispute resolution procedures in contested cases. Specifically, the Joint Utilities requested that the chapter 22 rules be modified to require at least one settlement conference and to require that an initial settlement conference be conducted as soon as feasible, but not later than after the applicant files its direct testimony and before the deadline for any other intervening party to file its direct case. The Joint Utilities stated that promoting settlement early in a case can significantly reduce the time and cost of litigation and potentially clarify the issues in the case and reduce the number of issues in dispute.

The Joint Utilities further requested that the chapter 22 rules be modified to state that any party originally noticed in a case who chose not to intervene is not entitled to re-notice and an additional opportunity to intervene simply because a settlement results in an outcome different from what was originally proposed. The Joint Utilities stated that it is reasonable to expect persons who receive notice of a proceeding to understand that the proceeding may result in an outcome that differs materially from what the application initially proposed. The Joint Utilities requested that the commission open a rulemaking project to develop safe harbor language a utility could include in its notice of filing to avoid the possibility of having to re-notice later in the proceeding.

The Joint Utilities also requested that the commission modify its rules to make alternative dispute resolution (ADR) procedures available to parties in all contested cases before the commission. The Joint Utilities commented that the commission could model the ADR procedures after those provided for appeals of Electric Reliability Council of Texas (ERCOT) actions under §22.251(n) or after those available to parties to proceedings pending before the Federal Energy Regulatory Commission (FERC). The Joint Utilities indicated that many of the commission's contested cases would benefit from the application of ADR procedures, resulting in significant savings to all parties involved, including the commission.

The Joint Utilities commented that the commission should make its electronic filing system and electronic filing notification system the default methods of filing and notice, respectively. The Joint Utilities argued that making this transition would likely save substantial resources, time, and money, and that the commission's goal should be to make electronic filing and notification systems the default even if an interim transition period is necessary.

The Joint Utilities commented that the process for administrative review in §22.32 should be consolidated with the process for informal disposition in §22.35, and that the criteria governing which proceedings are eligible for administrative review or informal disposition should be revised to eliminate uncertainty and ambiguity. The Joint Utilities stated that the consolidation should result in a single process that applies to all proceedings, including rate proceedings that satisfy applicable criteria. The Joint Utilities argued that it is unclear why there are two separate rules that have similar, but slightly differing, sets of criteria governing essentially the same process. The Joint Utilities also commented that there appears to be an inconsistency between §22.32(a) and §22.243, stating that §22.32(a) does not allow the use of the admin-

istrative review process for rate proceedings while §22.243 expressly allows administrative review under §22.32 in rate proceedings if no interventions are filed.

The Joint Utilities further commented that the presence of the term *unprotested case* in the definitions section of chapter 22 creates further ambiguity because the term is not used in chapter 22, despite the fact that the term would seem to describe both administrative reviews and informal dispositions. The Joint Utilities further stated that it is unclear why otherwise contested cases that are fully and unanimously settled are not deemed unprotested cases or treated under the administrative review or informal disposition processes. The Joint Utilities also argued that §22.33 is ambiguous throughout regarding the meaning and application of the concept of an undocketed application.

The Joint Utilities commented that the timeframe for filing statements of position established by §22.124 should be modified to treat statements of position the same as any other pleading, including responsive pleadings and prefiled testimony to the extent a statement of position is filed in lieu of a responsive pleading or prefiled testimony. The Joint Utilities argued that allowing statements of position to be filed on a different timeframe than responsive pleadings and prefiled testimony, especially a timeframe that allows statements of position to be filed so close to the date of a hearing, tends to burden other parties to a proceeding without producing any gains in fairness or efficiency.

The Joint Utilities commented that §22.144 should be modified to make the due date for discovery objections the same as the due date for responses to discovery requests, regardless of whether the discovery timeframe is set by rule or by the presiding officer. The Joint Utilities argued that placing objections on a shorter timeframe than responses is inefficient because parties may not be able to determine if an objection is warranted before the response deadline, especially if the discovery request at issue calls for the production of voluminous documents. The Joint Utilities stated that the issue becomes more acute in cases where the presiding officer sets shorter discovery deadlines than those allowed by the rule, as the presiding officer typically follows the pattern established by the rule and sets a shorter timeframe for objections than for responses.

The Joint Utilities commented that §22.52 should be modified to allow applicants to notify landowners of the commission's final order in a proceeding when it is issued. The Joint Utilities argued that the current requirement that the notice be provided only once the final order becomes appealable is problematic in cases where time is of the essence for completing the project, such as the Houston Import Project, as a final order might not become appealable until up to 100 days after it is issued if a timely motion for rehearing is filed. The Joint Utilities proposed that the applicant be required to re-notify landowners when the order becomes appealable only if the final order is materially modified as a result of a timely motion for rehearing.

CenturyLink commented that the reasons for adopting chapter 22 continue to exist and the rules should be readopted. CenturyLink commented that amendments should be made to the rules in this project under §2001.039 of the Texas Government Code, as affected parties would already be on notice of the scope of the project. CenturyLink stated that it supported the changes to chapter 22 that AT&T proposed in Project No. 40337, and would continue to support those changes if AT&T were to file them in this project, consistent with CenturyLink's comments in this project.

CenturyLink commented that the commission's rules, particularly §21.5(a) and §22.101(a), should be amended to clarify that non-attorneys may not engage in the unlicensed practice of law. CenturyLink proposed that, at a minimum, commission staff's recommendation in Project No. 41618 be adopted.

CenturyLink recommended that §21.31 and §22.71 be amended to allow a document to be considered filed when received electronically in the commission's Interchange system. CenturyLink stated that regardless of whether the commission adopts some form of electronic filing, the commission should reduce the number of paper copies of documents that are required to be filed.

CenturyLink also commented that §§21.35, 21.95, 22.74, and 22.144 should be amended to explicitly allow email service as an acceptable form of service. CenturyLink stated that email service is commonly agreed to by parties, but that there have been occasions where a party has been unable to contact other parties to obtain their consent to email service prior to making a filing.

The TTA commented that its position on the issue of legal representation during proceedings before the commission has not changed since it filed comments in Project No. 41618, and it recommended that the commission resume its work in that project.

Specifically, the TTA stated that non-attorneys should not be allowed to engage in the unauthorized practice of law in contested cases before the commission. The TTA argued that uncontested matters, such as workshops prior to the issuance of a strawman, would suffer a decline in effectiveness if affected customers and non-attorney personnel from affected companies were not allowed to participate. The TTA stated that requiring legal representation in such proceedings would add a financial burden to participation, which would reduce the benefit of participation and might cause parties not to participate at all. The TTA argued that retaining legal representation will often be necessary for parties participating in proceedings before the commission, but requiring parties to always retain legal representation would be costly and burdensome, and might prevent knowledgeable representatives from participating in proceedings before the commission.

Houston replied that it supports AT&T's and CenturyLink's comments and proposals regarding electronic filing and electronic service in commission proceedings. Houston stated that electronic filing would be more efficient for both the commission and parties to commission proceedings. Houston argued that while all parties would benefit from electronic filing, those not located in Austin need an electronic filing option the most, as those parties often must either use an overnight delivery service or engage a person or company located in Austin in order to ensure the requisite number of copies are filed on the filing deadline. Houston argued that permitting electronic filing while eliminating the requirement to file multiple copies of an item when electronic filing is used would save all parties resources.

Houston also agreed with AT&T and CenturyLink's comments regarding electronic service. Houston noted that in most cases, parties agree to electronic service, and stated that allowing electronic service would conserve resources and promote efficiency.

Houston voiced strong disagreement with AT&T's and CenturyLink's recommendation that the deadline for filing objections to requests for information be extended from 10 days to 20 days. Houston argued that this modification would lengthen the time that parties propounding discovery have to wait to obtain needed information about a utility's application. Houston argued that this would effectively restrict the amount of discovery parties are able to obtain in what is often, especially in the case of rate proceedings, already a compressed procedural schedule. Houston also urged that the TRCP are not an appropriate model in this instance, as civil cases, unlike rate proceedings, do not generally require that discovery be complete within 60-90 days. Houston noted that such discovery limitations are virtually nonexistent in complex litigation.

Houston stated that, due to compressed procedural schedules, discovery deadlines in rate cases are often shortened either by agreement of

the parties or by the administrative law judge in order to allow for sufficient discovery. Houston argued that extending the deadline for discovery objections, as proposed by AT&T and CenturyLink, would benefit applicants while materially burdening intervenors and commission staff, and would not improve the discovery process. Houston stated that under the current deadlines, a party propounding discovery might have to wait as long as 35-40 days to receive a response if a discovery dispute arises. Houston argued that extending the deadline to file objections to discovery requests could result in a wait of 45-50 days or longer, leaving little time for follow-up or clarifying discovery requests.

Houston also disagreed with the Joint Utilities' recommendations regarding the deadline for filing statements of position. Houston argued that the current deadline is equitable and practical, as it allows parties to review the positions of all other parties in the proceeding prior to filing a statement of position, thereby allowing those filing statements of position to indicate on the record the positions they support or oppose. Houston argued that this aids the parties and the administrative law judges in cases, as otherwise Intervenors and staff would in many instances be unable to indicate their positions regarding other parties' testimony and positions until the filing of post-hearing briefs.

Commission response

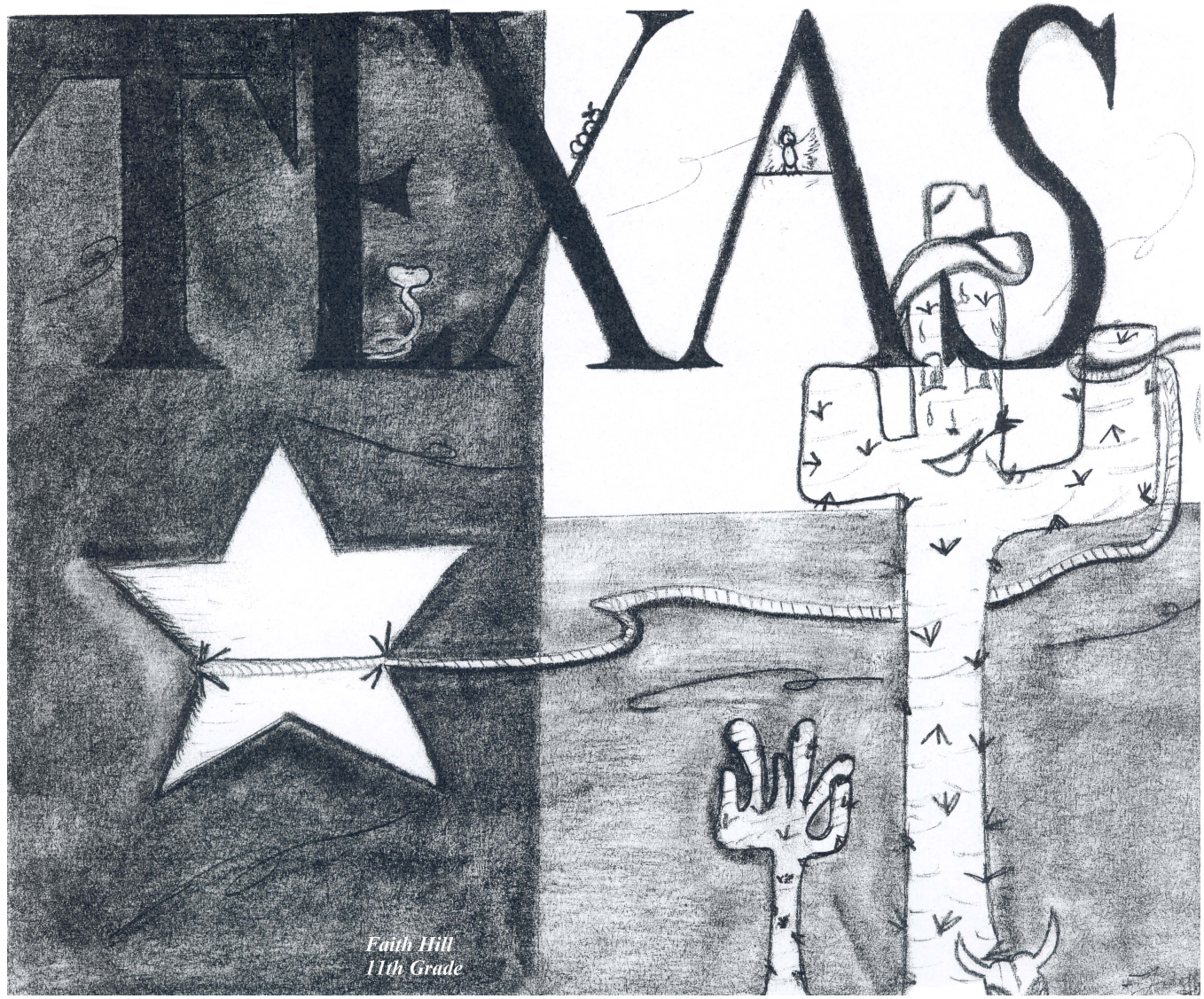
As described in the notice of publication, the amendment of any particular section of chapter 22 may be initiated under a separate proceeding.

The commission appreciates the thoughtful comments on this chapter, but declines to make any changes to chapter 22 in this rule review at this time. Some of the amendments suggested in the comments might improve the commission's procedural rules, but would require further consideration, including additional notice and public input, before adoption. The commission also notes that there is some overlap between the suggestions commenters made in this project and the rule modifications the commission proposed in Project No. 45116. Furthermore, several of the suggested amendments would affect rules similar to those in 16 TAC chapter 21, Interconnection Agreements for Telecommunications Service Providers. In order to maintain uniformity of practice before the commission, it may be appropriate to amend both sets of rules at the same time, in a separate rulemaking proceeding (or proceedings).

The commission has completed the review of 16 TAC chapter 22 as required by Texas Government Code §2001.039 and has determined that the reasons for initially adopting the rules in chapter 22 continue to exist. Therefore, the commission re-adopts chapter 22, Procedural Rules, in its entirety, under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (PURA) which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission; the Texas Water Code §13.041(b) (West 2008 and Supp. 2016) (TWC), which requires the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission; and Texas Government Code §2001.039 (West 2016), which requires each state agency to review and re-adopt its rules every four years.

Cross Reference to Statutes: PURA §14.002 and §14.052; TWC §13.041(b); and Texas Government Code §2001.039.

TRD-201605788
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 14, 2016



Faith Hill
11th Grade

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: 10 TAC §10.614(f)(3)

Method	Beginning of 90 Day Notification Period
Written Local Estimate	Date of letter from the Utility Provider
HUD Utility Schedule Model	Date entered as "Form Date"
Energy Consumption Model	60 days after the end of the last month of the 12 month period for which data was used to compute the estimate
Actual Use Method	Date the allowance is approved by the Department

Figure: 16 TAC §24.21(j)(3)

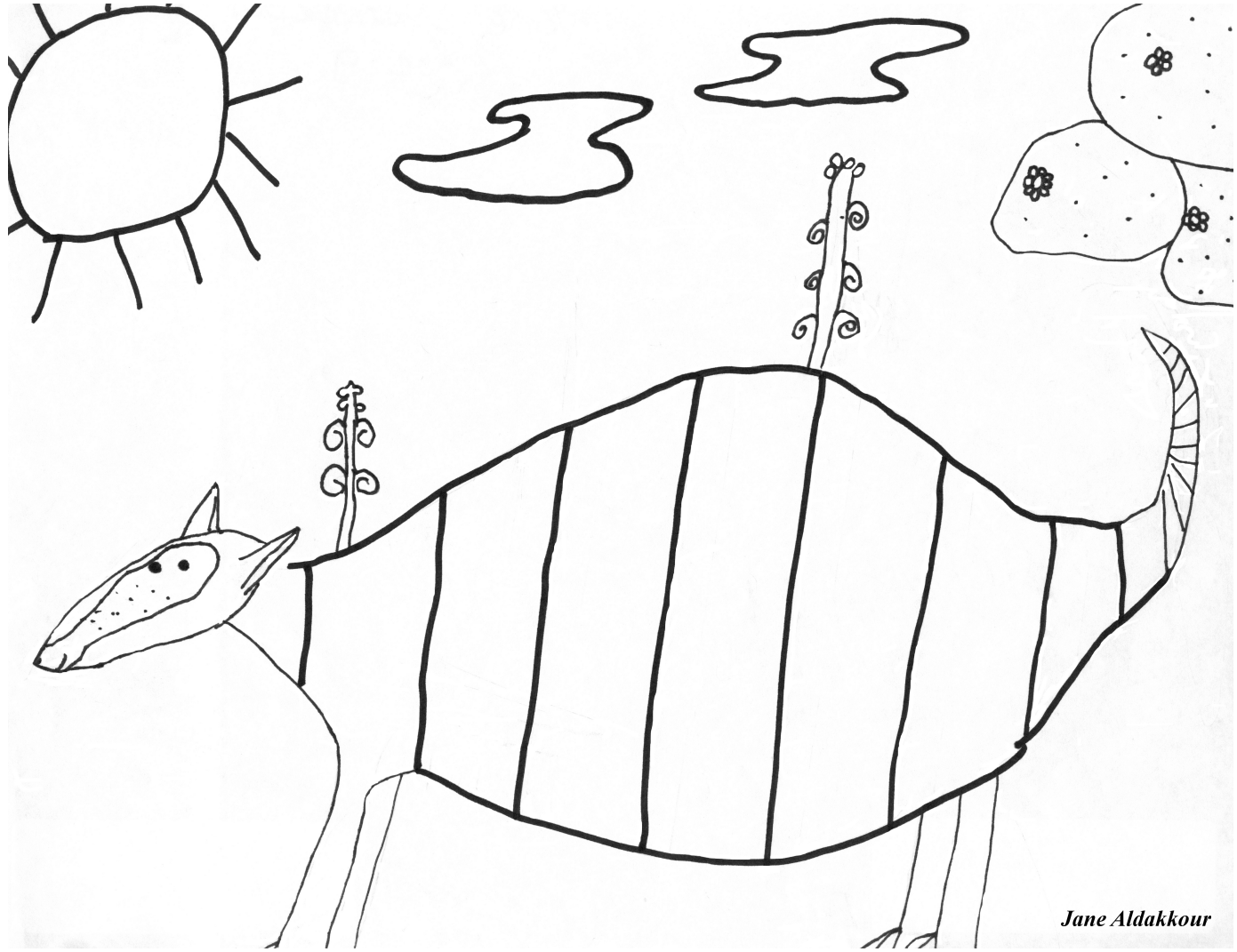
TGC = Temporary gallonage charge

cgc = current gallonage charge

r = water use reduction expressed as a decimal fraction (the pumping restriction)

prr = percentage of revenues to be recovered expressed as a decimal fraction (*i.e.*, 50% = 0.5)

TGC = cgc + [(prr)(cgc)(r)/(1.0-r)]


Jane Aldakkour

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/16 - 11/27/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/21/16 - 11/27/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201605850
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 15, 2016

♦ ♦ ♦

Credit Union Department

Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Application to Expand Field of Membership - Approved

Community Resource Credit Union, Baytown, Texas - See *Texas Register* issue dated May 29, 2015.

Application for a Merger or Consolidation - Approved

TrustUS Federal Credit Union and Texas Trust Credit Union - See *Texas Register* issue dated February 26, 2016.

Application to Amend Articles of Incorporation - Approved

Bridge Credit Union, Corpus Christi, Texas - See *Texas Register* issue dated September 30, 2016.

TRD-201605858
Harold E. Feeney
Commissioner
Credit Union Department
Filed: November 16, 2016

♦ ♦ ♦

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 January 6, 2017. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 6, 2017. 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: A DEEL'S BUSINESS INCORPORATED dba Kwick Korner Shell; DOCKET NUMBER: 2016-1223-PST-E; IDENTIFIER: RN102012473; LOCATION: Lufkin, Angelina 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: $4,500 ; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Aalmin Corporation dba Maxi Food Mart; DOCKET NUMBER: 2016-1261-PST-E; IDENTIFIER: RN102385770; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and 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: $4,125; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: ADVANCE PETROLEUM DISTRIBUTING COMPANY, INCORPORATED dba Automated Fueling 81; DOCKET NUMBER: 2016-1423-PST-E; IDENTIFIER: RN102485273; LOCATION: Grand Prairie, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of

at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ALISOOR BUSINESS INCORPORATED dba Big Star Food Mart; DOCKET NUMBER: 2016-0977-PST-E; IDENTIFIER: RN102714581; LOCATION: League City, Galveston County; TYPE OF FACILITY: an underground storage tank (UST) system with three out-of-service USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.49(a)(1) and §334.54(b)(2) and (c)(1), and TWC, §26.3475(d), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons and failing to maintain corrosion protection for the temporarily out-of-service UST system; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0913-PWS-E; IDENTIFIER: RN101197275; LOCATION: Old River-Winfree, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.42(e)(5), by failing to completely cover the hypochlorination solution container top to prevent the entrance of dust, insects, and other contaminants; and 30 TAC §290.46(f)(2) and (3)(A)(iv), (B)(iv), and (D)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; PENALTY: $383; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: BIC C, L.L.C. dba Bic C Food Mart; DOCKET NUMBER: 2016-1409-PST-E; IDENTIFIER: RN101433746; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: BSRP ENTERPRISES INCORPORATED dba Handi Stop; DOCKET NUMBER: 2016-1013-PST-E; IDENTIFIER: RN101432649; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and 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: $4,500; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: CHAHAL STORES INCORPORATED dba JD Convenience Store; DOCKET NUMBER: 2016-1524-PST-E; IDENTIFIER: RN101760320; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: City of Morgan's Point Resort; DOCKET NUMBER: 2016-0772-PWS-E; IDENTIFIER: RN102677366; LOCATION: City of Morgan's Point Resort, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $630; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Cowboy Ministries Alvin; DOCKET NUMBER: 2016-0256-PWS-E; IDENTIFIER: RN102677259; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect a routine distribution water sample for coliform analysis and failing to issue public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to collect a routine distribution water sample; and 30 TAC §290.46(f)(4) and THSC, §341.033(d), by failing to report a routine distribution water result for coliform to the ED; PENALTY: $1,190; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Efferson Elliott; DOCKET NUMBER: 2016-1269-PST-E; IDENTIFIER: RN102790805; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: retail fuel facility; RULES VIOLATED: 30 TAC §334.602(a), by failing to designate, train, and certify at least one named individual for each class of operator - Class A, Class B, and Class C for the facility; 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the underground storage tanks (USTs) to the TCEQ within 30 days from the date of occurrence of the change or addition; 30 TAC §334.50(a) and §334.54(b)(2) and (c)(2), and TWC, §26.3475(c)(1), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons and failing to monitor a temporarily out-of-service UST system for releases; 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: $13,026; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: Hamshire-Fannett Independent School District; DOCKET NUMBER: 2014-1609-MWD-E; IDENTIFIER: RN102334877; LOCATION: Fannett, Jefferson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012098001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, and TCEQ Agreed Order Docket Number 2012-0730-MWD-E, Ordering Provision Number 2, by failing to comply with permitted effluent limits; TWC, §26.121(a)(1), 30 TAC §305.125(1), (4), and (5), and

TPDES Permit Number WQ0012098001, Permit Conditions Numbers 2.d, and Operational Requirements Number 1, by failing to prevent the discharge of partially treated wastewater into or adjacent to any water in the state; 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0012098001, Monitoring and Reporting Requirements Number 1, by failing to submit discharge monitoring reports by the 20th day of the following month; and 30 TAC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0012098001, Monitoring and Reporting Requirements Number 1, by failing to collect and analyze effluent samples at the minimum frequency specified in the permit; PENALTY: $57,500; Supplemental Environmental Project offset amount of $57,500; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: KING-MESA, INCORPORATED; DOCKET NUMBER: 2016-1053-PST-E; IDENTIFIER: RN102772571; LOCATION: Lamesa, Dawson County; TYPE OF FACILITY: fleet and retail refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79705-5404, (432) 570-1359.

(14) COMPANY: M. LIPSITZ and Company, Limited; DOCKET NUMBER: 2016-1511-PST-E; IDENTIFIER: RN102483047; LOCATION: Waco, McLennan County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Larry Butler, (512) 239-2543; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Mike's Little Supermarket and Deli, LLC dba Luke's Little Supermarket and Deli 2; DOCKET NUMBER: 2016-0749-PST-E; IDENTIFIER: RN102280161; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: an underground storage tank (UST) system with four out-of-service USTs; RULES VIOLATED: 30 TAC §334.602(a), by failing to identify and designate for the UST facility at least one named individual for each class of operator - Class A, Class B, and Class C; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §§334.49(a), 334.50(b)(1)(A) and 334.54(b)(2), (c)(1) and (2), and TWC, §26.3475(c)(1) and (d), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons and failing to monitor the UST for releases at a frequency of at least once every month and maintain corrosion protection for the temporarily out-of-service UST system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of a petroleum USTs; PENALTY: $14,144; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: NICO-TYME WATER CO-OP, INCORPORATED; DOCKET NUMBER: 2016-0384-PWS-E; IDENTIFIER: RN101215788; LOCATION: Elmendorf, Bexar County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(4), by failing to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to develop and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tank annually; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (iv), and (B)(v), by failing to properly maintain water works operation and maintenance records and make them available for review to the executive director during the investigation; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; and 30 TAC §290.46(t) by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and an emergency phone number where a responsible official can be contacted; PENALTY: $680; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: PARAMOUNT CORPORATION dba Quik Pantry; DOCKET NUMBER: 2016-1058-PST-E; IDENTIFIER: RN102347689; LOCATION: Mathis, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(18) COMPANY: Paul R. Young; DOCKET NUMBER: 2016-1836-WOC-E; IDENTIFIER: RN105721849; LOCATION: Killeen, Bell County; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: SANDFORD PETROLEUM, INCORPORATED dba Hudco Automated Fuel Station; DOCKET NUMBER: 2016-1360-PST-E; IDENTIFIER: RN101546257; LOCATION: Bridgeport, Wise County; TYPE OF FACILITY: unmanned fuel center with retail sales of petroleum; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(iii)(I) 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 and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; and 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of pro-

tection at a frequency of at least once every three years; PENALTY: $18,500; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: SHINTECH INCORPORATED; DOCKET NUMBER: 2016-0477-PWS-E; IDENTIFIER: RN100213198; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h) and (i)(1) and 40 Code of Federal Regulations (CFR) §141.86 and §141.90(a), by failing to collect lead and copper tap samples at the required ten sample sites for the six-month monitoring period (January 1, 2015 - June 30, 2015) following the January 1, 2014 - December 31, 2014, monitoriong period during which the lead and copper action levels were exceeded, have the samples analyzed, and report the results to the executive director (ED); 30 TAC §290.117(d)(2)(A), (h) and (i)(2) and §290.122(c)(2)(A) and (f), and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead and copper action levels were exceeded, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §141.83 and 141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead and copper action levels were exceeded and failng to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; and 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f), and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2014 - December 31, 2014, monitoring period during which the lead and copper action levels were exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; PENALTY: $1,121; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Venus Operating Corporation dba Venus Food Mart; DOCKET NUMBER: 2016-1188-PST-E; IDENTIFIER: RN101561819; LOCATION: Alvarado, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,125; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: VRV CORPORATION dba Kennedale Filling Station; DOCKET NUMBER: 2016-1449-PST-E; IDENTIFIER: RN102284254; LOCATION: Kennedale, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the gravity piping associated with the underground storage tank system; PENALTY: $6,142; ENFORCEMENT COORDINATOR: Benjamin Sakmar, (512) 239-1704; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Winkler Water Supply Corporation; DOCKET NUMBER: 2016-1399-PWS-E; IDENTIFIER: RN101212017; LOCATION: Streetman, Navarro County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to ensure the grounds and facilities are maintained in a manner so as to minimize the possibility of rodents, insects and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water; and 30 TAC §290.45(b)(2)(H), and Texas Health and Safety Code, §341.0315(c), by failing to provide emergency power that will deliver water at a rate of 0.35 gallons per minute per connection in the event of the loss of normal power supply for systems that do not meet the elevated storage requirement and serve 250 or more service connections; PENALTY: $200; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201605842
Kathleen Decker
Litigation Division Director
Texas Commission on Environmental Quality
Filed: November 15, 2016

♦ ♦ ♦

Combined Notice: Notice of Public Meeting and Notice of Application and Preliminary Decision for an Air Quality Permit Proposed Permit Number: 138309

APPLICATION AND PRELIMINARY DECISION. CemTech Concrete Ready Mix Inc., 931 Bennington St., Houston, Texas 77022-6306, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 138309, which would authorize construction of a Concrete Batch Plant located at 3116 Jensen Rd., Houston, Harris County, Texas 77026. This application was submitted to the TCEQ on January 22, 2016. The proposed facility will emit the following contaminants: particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less.

The executive director has completed the technical review of the application and prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue the permit because it meets all rules and regulations. The permit application, executive director's preliminary decision, and draft permit will be available for viewing and copying at the TCEQ central office, the TCEQ Houston regional office, and at the Carnegie Regional Library, 1050 Quitman Street, Houston, Harris County, Texas, beginning the first day of publication of this notice. The facility's compliance file, if any exists, is available for public review at the TCEQ Houston Regional Office, 5425 Polk St. Ste. H, Houston, Texas.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments to the Office of the Chief Clerk at the address below. The TCEQ will consider all public comments in developing a final decision on the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will

not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. At the conclusion of the comment period, all formal comments will be considered before a decision is reached on the permit application. A written response to all formal comments will be prepared by the Executive Director and will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, December 8, 2016 at 7:00 p.m.

Andrea's Reception Hall

3301 Tidwell Road

Houston, Texas 77093

INFORMATION. Citizens are encouraged to submit written comments anytime during the public meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *http://www.tceq.texas.gov/about/comments.html.* If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record.

MAILING LIST. You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address above.

RESPONSE TO COMMENTS AND EXECUTIVE DIRECTOR ACTION. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. Because no timely hearing requests have been received, after preparing the response to comments, the executive director may then issue final approval of the application. **The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on a mailing list for this application, and will be posted electronically to the Commissioners' Integrated Database (CID).**

INFORMATION AVAILABLE ONLINE. When they become available, the executive director's response to comments and the final decision on this application will be accessible through the Commission's Web site at *www.tceq.texas.gov/goto/cid.* Once you have access to the CID using the above link, enter the permit number for this application which is provided at the top of this notice. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. *http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.790555&lng=-95.341111&zoom=13&type=r.*

AGENCY CONTACTS AND INFORMATION. For more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687 4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from CemTech Concrete Ready Mix Inc., 931 Bennington Street, Houston, Texas 77022-6306 or by calling Mr. Venkata Godasi, AARC Environmental, Inc. at (713) 974-2272.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

TRD-201605860
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Enforcement Orders

An agreed order was adopted regarding City of Del Rio, Docket No. 2013-2103-MLM-E on November 16, 2016 assessing $14,850 in administrative penalties with $2,970 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kolkhorst Petroleum Company, Docket No. 2014-0730-PST-E on November 16, 2016 assessing $46,975 in administrative penalties with $9,395 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TCI Lonestar Inc and Almo Investment Ii, Ltd. dba Texas Best Smokehouse III, Docket No. 2014-1357-WQ-E on November 16, 2016 assessing $12,250 in administrative penalties with $2,450 deferred. Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Paso Del Norte Ready Mix, Inc. dba El Paso Star Redi Mix, Docket No. 2014-1748-MLM-E on November 16, 2016 assessing $31,750 in administrative penalties with $6,350 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Beacon Bay Marina, LLC, Docket No. 2014-1801-PST-E on November 16, 2016 assessing $14,975 in administrative penalties with $2,995 deferred. Information concerning any aspect of this order may be obtained by contacting James Baldwin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Hitchcock, Docket No. 2015-0137-MWD-E on November 16, 2016 assessing $70,313 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sid Richardson Carbon, Ltd., Docket No. 2015-1179-AIR-E on November 16, 2016 assessing $21,000 in administrative penalties with $4,200 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Angel Luis Alfaro, Docket No. 2015-1192-IHW-E on November 16, 2016 assessing $18,750 in administrative penalties with $15,150 deferred. Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Joaquin, Docket No. 2015-1223-MWD-E on November 16, 2016 assessing $37,287 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Amanda Patel, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Lass Water Company Inc, Docket No. 2015-1450-MLM-E on November 16, 2016 assessing $8,884 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 adopted regarding Beacon Estates Water Supply Corporation, Docket No. 2015-1612-MWD-E on November 16, 2016 assessing $31,500 in administrative penalties with $27,900 deferred. Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Bsw Investments LLC dba Bay City Food Mart, Docket No. 2015-1817-PST-E on November 16, 2016 assessing $32,063 in administrative penalties with $6,412 deferred. Information concerning any aspect of this order may be obtained by contacting Jessica Bland, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Juan G. Garza dba Platinum Plumbing, Docket No. 2016-0035-SLG-E on November 16, 2016 assessing $41,986 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Elsa, Docket No. 2016-0085-PWS-E on November 16, 2016 assessing $1,952 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, Staff Attorney at (512) 239-2545 3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Hira Lakhani Holdings, Inc. dba Stop N Drive, Docket No. 2016-0126-PST-E on November 16, 2016 assessing $9,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lucid Energy Westex, LLC, Docket No. 2016-0173-AIR-E on November 16, 2016 assessing $18,000 in administrative penalties with $3,600 deferred. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Pendleton Harbor Water Supply Corporation, Docket No. 2016-0364-PWS-E on November 16, 2016 assessing $351 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sarah Kim, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Honeywell International Inc., Docket No. 2016-0390-AIR-E on November 16, 2016 assessing $42,805 in administrative penalties with $8,561 deferred. Information concerning any aspect of this order may be obtained by contacting Shelby Orme, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding P & D Business LLC dba Hawk Cove Grocery, Docket No. 2016-0416-PST-E on November 16, 2016 assessing $8,188 in administrative penalties with $1,637 deferred. Information concerning any aspect of this order may be obtained by contacting Jonathan Nguyen, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Byers, Docket No. 2016-0548-MWD-E on November 16, 2016 assessing $9,062 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Anadarko E&P Onshore LLC, Docket No. 2016-0604-AIR-E on November 16, 2016 assessing $73,200 in administrative penalties with $14,640 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wtg Jameson, LP, Docket No. 2016-0620-AIR-E on November 16, 2016 assessing $11,972 in administrative penalties with $2,394 deferred. Information concerning any aspect of this order may be obtained by contacting Raime Hayes Falero, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Road Ranger, L.L.C., Docket No. 2016-0631-PWS-E on November 16, 2016 assessing $2,944 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Steven Hall, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Magellan Terminals Holdings, L.P. and Magellan Processing, L.P., Docket No. 2016-0634-IWD-E on November 16, 2016 assessing $13,300 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Wtr Real Estate Holdings, L.c. dba Heartland House, Docket No. 2016-0692-PWS-E on November 16, 2016 assessing $246 in administrative penalties with $246 deferred. Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Brenda Lopez, Docket No. 2016-0693-PWS-E on November 16, 2016 assessing $217 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting James Boyle, Enforcement Coordinator at

(512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Megargel, Docket No. 2016-0747-PWS-E on November 16, 2016 assessing $195 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Sandra Douglas, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding S.l.c. Water Supply Corporation, Docket No. 2016-0825-PWS-E on November 16, 2016 assessing $1,122 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Evergreen A&F LLC dba Lucky Travel 2, Docket No. 2016-0879-PST-E on November 16, 2016 assessing $14,439 in administrative penalties with $2,887 deferred. Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201605867
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Notice of Hearing

633-4S Ranch, Ltd. and Stahl Lane, Ltd.

SOAH Docket No. 582-17-0899

TCEQ Docket No. 2016-1402-MWD

Permit No. WQ0015095001

APPLICATION.

633-4S Ranch, Ltd. and Stahl Lane, Ltd., 8023 Vantage Drive, Suite 1200, San Antonio, Texas 78230, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment to TCEQ Texas Land Application Permit No. WQ0015095001 to convert the disposal method from land application to discharge to water in the state. Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00015095001 would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The current permit authorizes the disposal of 180,000 gallons per day of treated domestic wastewater via public access subsurface drip irrigation of 41.32 acres. TCEQ received this application on August 12, 2014.

The facility will be located approximately 6,500 feet north-northeast of the intersection of Smithson Valley Road and Farm-to-Market Road 1863, approximately 1,200 feet north of the confluence of Lewis Creek and Dripping Springs Creek in Comal County, Texas 78163. The treated effluent will be discharged to an unnamed tributary to Lewis Creek; thence to Lewis Creek; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water uses are minimal aquatic life use for unnamed tributary to Lewis Creek and limited aquatic life use for Lewis Creek.

Nutrients are listed as a screening concern in Segment No. 1908 in the 2012 Texas Water Quality Inventory. Based on Segment No. 1908 screening concerns for nutrients and nutrient screening results, a permit limit of 0.5 mg/L total phosphorous was added to the draft permit to help preclude degradation to Lewis Creek and Upper Cibolo Creek.

The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. The use of aquifer protection applies to the contributing, recharge, and transition zones of the Edwards Aquifer for Segment No. 1908. In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Upper Cibolo Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Bulverde/Spring Branch Library, 131 Bulverde Crossing, Bulverde, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.765555&lng=-98.391944&zoom=13&type=r>. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - January 9, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on October 11, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (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 from 633-4S Ranch, Ltd. and Stahl Lane, Ltd. at the address stated above or by calling Mr. Oscar D. Graham, South Texas Wastewater Treatment, at (830) 249-8098.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

TRD-201605862
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of AZEL H CORP. AND HK MIAN BUSINESS, INC. DBA MOON MART

SOAH Docket No. 582-16-5286

TCEQ Docket No. 2015-1336-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 15, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 29, 2016, concerning assessing administrative penalties against and requiring certain actions of AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, for violations in Harris County, Texas, of: Tex. Health & Safety Code §382.085(b), Tex. Water Code §26.3475(c)(1), and 30 Tex. Admin. Code §§115.242(d)(3) and 334.50(b)(1)(A).

The hearing will allow AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Chs. 7 and 26, Tex. Health & Safety Code Ch. 382, and 30 Tex. Admin. Code Chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 10, 2016

TRD-201605863
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Bassam Zahra DBA Saveway FS

SOAH Docket No. 528-17-1124

TCEQ Docket No. 2016-0627-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 8, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed August 24, 2016 concerning assessing administrative penalties against and requiring certain actions of Bassam Zahra d/b/a Saveway FS, for violations in Dallas County, Texas, of: Texas Water Code §26.3475(d) and 30 Texas Admin. Code §§334.7(d)(3), 334.49(c)(2)(C) and (c)(4)(C), and 334.54(b)(2).

The hearing will allow Bassam Zahra d/b/a Saveway FS, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative

penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Bassam Zahra d/b/a Saveway FS, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Bassam Zahra d/b/a Saveway FS to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Bassam Zahra d/b/a Saveway FS, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Texas Water Code §7.054, Texas Water Code chs. 7 and 26, and 30 Texas Admin. Code chs. 70 and 334; Texas Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Texas Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Texas Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Ian Groetsch, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 10, 2016

TRD-201605861
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of COLUMBUS MART, INC. AND FAKHRUZ ZAMAN D/B/A I-10 SHELL

COLUMBUS MART, INC. AND FAKHRUZ ZAMAN D/B/A I-10 SHELL

SOAH Docket No. 582-17-1125

TCEQ Docket No. 2016-0334-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - December 8, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed July 26, 2016, concerning assessing administrative penalties against and requiring certain actions of Columbus Mart, Inc. and Fakhruz Zaman d/b/a I-10 Shell, for violations in Colorado County, Texas, of: Tex. Water Code §26.3475(a) and (c)(1) and 30 Tex. Admin. Code §334.50(b)(1)(A) and (b)(2).

The hearing will allow Columbus Mart, Inc. and Fakhruz Zaman d/b/a I-10 Shell, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Columbus Mart, Inc. and Fakhruz Zaman d/b/a I-10 Shell, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of Columbus Mart, Inc. and Fakhruz Zaman d/b/a I-10 Shell to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. Columbus Mart, Inc. and Fakhruz Zaman d/b/a I-10 Shell, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054, Tex. Water Code chs. 7 and 26, and 30 Tex. Admin. Code chs. 70 and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Eric Grady, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: November 10, 2016

TRD-201605859
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 16, 2016

♦ ♦ ♦

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Jennifer Griggs at (512) 463-5798.

Deadline: Personal Financial Statement due February 12, 2016

Elaine L. Palmer, P.O. Box 131392, Houston, Texas 77219-1392

Deadline: Lobby Activities Report due January 11, 2016

Joseph M. McMahan, 1108 Lavaca St., Ste. 110, 1A-139, Austin, Texas 78701-2110

Deadline: Lobby Activities Report due April 11, 2016

Frank J. Corte, Jr., P.O. Box 690474, San Antonio, Texas 78269-0474

Martha K. Landwehr, 1402 Nueces St., Austin, Texas 78701-1508

TRD-201605779
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: November 10, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Notice of Public Hearing and Public Comment Period on the Draft 2017 State of Texas Consolidated Plan: One-Year Action Plan

The Texas Department of Housing and Community Affairs ("TDHCA") will hold a public hearing to accept public comment on the Draft 2017 State of Texas Consolidated Plan: One-Year Action Plan.

The public hearing will take place as follows:

Tuesday, December 6, 2016

2:30 p.m. Austin local time

Stephen F. Austin Building

1700 North Congress Avenue, Room 170

Austin, Texas 78701

TDHCA, Texas Department of Agriculture ("TDA"), and Texas Department of State Health Services ("DSHS") prepared the Draft 2017 State of Texas Consolidated Plan: One-Year Action Plan ("the Plan") in accordance with 24 CFR §91.320. TDHCA coordinates the preparation of the State of Texas Consolidated Plan documents. The Plan covers the State's administration of the Community Development Block Grant Program ("CDBG") by TDA, the Housing Opportunities for Persons with AIDS Program ("HOPWA") by DSHS, and the Emergency Solutions Grants ("ESG") Program, the HOME Investment Partnerships ("HOME") Program, and the National Housing Trust Fund ("NHTF") by TDHCA.

The Plan reflects the intended uses of funds received by the State of Texas from HUD for Program Year 2017. The Program Year begins on February 1, 2017, and ends on January 31, 2018. The Plan also illustrates the State's strategies in addressing the priority needs and specific goals and objectives identified in the 2015-2019 State of Texas Consolidated Plan.

The Plan may be accessed from TDHCA's Public Comment Web page at: http://www.tdhca.state.tx.us/public-comment.htm. The public comment period for the Plan will be open from November 14, 2016 through December 15, 2016. Anyone may submit comments on the Plan in written form or oral testimony at the December 6, 2016 public hearing. In addition, written comments concerning the Plan may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070 anytime during the comment period. Comments must be received no later than December 15, 2016 at 6:00 p.m. Austin local time.

Individuals who require auxiliary aids or services at the public hearing should contact Ms. Gina Esteves, ADA responsible employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least three (3) days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters at the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three (3) days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-201605787
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: November 14, 2016

♦ ♦ ♦

Legislative Budget Board

Tax Relief Amendment Implementation - Limit on Growth of Certain State Appropriations

Legal References

Article VIII, Sec. 22(a), Texas Constitution, approved by the voters in November 1978, states that:

In no biennium shall the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy. The legislature shall provide by general law procedures to implement this subsection.

This provision does not alter, amend, or repeal Article III, Section 49a, of the Texas Constitution, the well-known "pay-as-you-go" provision.

To implement this provision of the Texas Constitution, the Sixty-sixth Legislature enacted Article 9, Chapter 302, Laws 1979 (Tex. Government Code Ann., Sec. 316) which placed with the Legislative Budget Board the responsibility for approval of a limitation on the growth of

certain state appropriations. A part of the procedure for approving the limitation is set forth in Sections 316.003 and 316.004 as follows:

Section 316.003. Before the Legislative Budget Board approves the items of information required by Section 316.002, the board shall publish in the *Texas Register* the proposed items of information and a description of the methodology and sources used in the calculations.

Section 316.004. Not later than December 1 of each even-numbered year, the Legislative Budget Board shall hold a public hearing to solicit testimony regarding the proposed items of information and the methodology used in making the calculations required by Section 316.002.

The items of information mentioned above are identified as follows in Section 316.002:

(1) the estimated rate of growth of the state's economy from the current biennium to the next biennium;

(2) the level of appropriations for the current biennium from state tax revenues not dedicated by the constitution; and

(3) the amount of state tax revenues not dedicated by the constitution that could be appropriated for the next biennium within the limit established by the estimated rate of growth of the state's economy.

In this memorandum, each item of information is taken up in the order listed above.

Estimated Rate of Growth of the State's Economy

A definition of the "estimated rate of growth of the state's economy" is set forth in paragraph (b) of Section 316.002 in the following words:

(b) Except as provided by Subsection (c), the board shall determine the estimated rate of growth of the state's economy by dividing the estimated Texas total personal income for the next biennium by the estimated Texas total personal income for the current biennium. Using standard statistical methods, the board shall make the estimate by projecting through the biennium the estimated Texas total personal income reported by the United States Department of Commerce or its successor in function.

(c) If a more comprehensive definition of the rate of growth of the state's economy is developed and is approved by the committee established by Section 316.005, the board may use that definition in calculating the limit on appropriations.

The Commerce Department's Bureau of Economic Analysis defines state personal income as follows:

...the income received by persons from all sources, that is, from participation in production, from both government and business transfer payments, and from government interest. Personal income is the sum of wage and salary disbursements, supplements to wages and salaries, proprietors' income, rental income of persons, personal dividend income, personal interest income and transfer payments, less contributions for social insurance.

Table 1 displays the Commerce Department's personal income account for Texas for calendar year 2015. The largest component of Texas personal income is wage and salary disbursements, estimated at $661.7 billion during calendar 2015. Salary and wage disbursements are added with supplements to wages and salaries, primarily employer contributions to private pensions and welfare funds, and proprietors' income to arrive at total earnings by place of work. Texas total earnings by place of work reached an estimated $985.5 billion in calendar year 2015.

In deriving Texas total personal income, adjustments are made to total earnings by place of work. Personal and employee contributions for social insurance, principally social security payroll taxes paid by employees and self-employed, are deducted. A place-of-residence adjustment is also made to reflect the earnings of workers who cross state borders to live or work. Dividends, interest and rent income are then added, along with transfer payments. The major types of transfer payments include social security, various retirement and unemployment insurance benefits, welfare, and disability and health insurance payments. Texas total personal income is estimated to be $1,289.6 billion for calendar year 2015.

The U.S. Department of Commerce reports personal income estimates by calendar quarter and year. Since the state's fiscal year begins on September 1 and ends August 31, an adjustment is required to present these data on a biennial basis. The Legislative Budget Board uses the data for the first three calendar quarters of a year plus the fourth quarter of the preceding year to represent the state's fiscal year. A biennium is the sum of two fiscal years. The historical record of the rate of growth in Texas personal income for the past seventeen completed biennia using the most recent data published by the U.S. Department of Commerce is shown in Table 2.

Forecasting Texas Personal Income

In reviewing standard statistical techniques for forecasting or projecting Texas personal income, the Legislative Budget Board has obtained the latest economic forecasts from the following sources listed alphabetically: (1) IHS, (2) Moody's Analytics, (3) Perryman Group, (4) Texas A&M University - Department of Economics, and (5) Texas Comptroller of Public Accounts. These forecasts are based on econometric models developed and maintained by the forecasting services listed.

While each forecasting service brings its own approach to the development of economic projections, there are several characteristics common to the econometric models from which the Texas total personal income estimates are derived. First, each assumes that the U.S. economy is the driving force behind Texas economic activity. As a result, forecasts of U.S. economic variables are needed to drive each model. Secondly, each of the econometric models is structural in nature, representing certain assumptions about the structure of the Texas economy, consistent with economic theory. Structural models normally entail detailed modeling of key sectors of the state's economy, followed by statistical testing to establish relationships with other sectors of the economy. Previous memoranda published on the constitutional limit include additional discussion of the forecasting methods used. See the following issues of the *Texas Register:* 5 TexReg 4272, 7 TexReg 3727, 9 TexReg 5219, 11 TexReg 4590, 13 TexReg 4599, 15 TexReg 6876, 17 TexReg 7702, 19 TexReg 9053, 21 TexReg 10919, 23 TexReg 11472, 25 TexReg 11735, 27 TexReg 10977, 29 TexReg 10612, 31 TexReg 9641, 33 TexReg 9109, 35 TexReg 10081, 37 TexReg 9031, and 39 TexReg 9391.

Table 3 details the Texas personal income growth rates of the various forecasting services for the 2018-19 biennium over the 2016-17 biennium. These forecasts range from 9.99 percent to 11.62 percent.

The personal income growth rates shown in Table 3, or any more recent forecasts if available, will be presented to the Legislative Budget Board for its consideration in adopting this item of information. The Board is not limited to one, or any combination of the growth rates, when adopting a Texas personal income growth rate for the 2018-19 biennium.

Table 4 briefly outlines the sources and dates for the Texas personal income growth rates presented in Table 3.

Appropriations from State Tax Revenue Not Dedicated by the Constitution - 2016-17 Biennium

The amount of appropriations from state tax revenue not dedicated by the Constitution in the 2016-17 biennium, the base biennium, is the

second item of information to be determined by the Legislative Budget Board. As of November 16, 2016 the staff estimates this amount to be $92,498,033,011. This item multiplied by the estimated rate of growth of Texas personal income from the 2016-17 biennium to the 2018-19 biennium produces the limitation on appropriations for the 2018-19 biennium under Article VIII, Section 22, of the Texas Constitution.

Calculating the 2018-19 Limitation

The limitation on appropriations of state tax revenue not dedicated by the State Constitution in the 2018-19 biennium may be illustrated by selecting a growth rate and applying it to the 2016-17 appropriations base. A change to the 2016-17 appropriations base would result in a corresponding change to the 2018-19 limit.

Method of Calculating 2016-17 Appropriations from State Tax Revenue Not Dedicated by the Constitution

As stated above, LBB staff estimates the amount of appropriations from state tax revenue not dedicated by the Constitution in the 2016-17 biennium to be $92,498,033,011. This section details the sources of information used in this calculation.

Total appropriations for the 2016-17 biennium include those made by the Eighty-fourth Legislature during the Regular Session in House Bill 1, House Bill 6, House Bill 7, and other legislation affecting appropriations. Appropriations totals have been adjusted to incorporate the Governor's vetoes. Any subsequent appropriations made by the Eighty-fifth Legislature for the 2016-17 biennium would also be included in total appropriations.

Section B of Table 5 shows, for general revenue related funds, the total amount of appropriations, the amount of total appropriations financed from constitutionally dedicated tax revenue, the amount financed from non-tax revenue and the remainder - the amount financed from tax revenue not dedicated by the Constitution - which is the amount subject to the limitation. General revenue related funds include the General Revenue Fund as well as the Available School Fund, State Textbook Fund, and Foundation School Fund.

I. General Revenue Related Funds

A. Appropriations are classified in this table as the following: (1) "estimated to be" line item appropriations, and (2) sum certain line item appropriations.

1. "Estimated to Be" Line Item Appropriations:

Each of these items under the subheading "estimated to be" may change under certain circumstances. For purposes of this calculation, most fiscal year 2016 amounts are based on actual 2016 expenditures. Most amounts for fiscal year 2017 are taken from House Bill 1, Eighty-fourth Legislature.

2. Sum Certain Line Item Appropriations:

As calculated in Table 6, the amount shown for "Total Sum Certain Line Item Appropriations" is the difference between total appropriations and the items listed separately as "estimated to be appropriations." General revenue related appropriations in Table 6 include those made by the Eighty-fourth Legislature during the Regular Session in House Bill 1, House Bill 6, House Bill 7, and other legislation affecting appropriations. Totals have been adjusted to incorporate the Governor's vetoes.

B. Source of Funding - General Revenue Related: Table 5, Part B shows that of the $105,808,193,473 of general revenue related fund appropriations, $88,063,383,148 is subject to the limitation because it is financed from state tax revenue not dedicated by the Constitution.

Constitutionally dedicated state tax revenues deposited into general revenue related funds are estimated to total $4,433,448,342 during the 2016-17 biennium. Appropriations from general revenue related funds financed from non-tax revenue are estimated at $13,311,361,982 for the 2016-17 biennium. Revenue analysis in this calculation applies actual fiscal year 2016 revenue collections and the most recent revenue estimates by the Comptroller of Public Accounts for fiscal year 2017.

II. Appropriations from Funds Outside of General Revenue

Certain tax revenues are deposited into accounts outside of the General Revenue Fund. Appropriations from these accounts funded with state tax revenue not dedicated by the Constitution are included in this calculation.

The state imposes a sales and use tax on boats and boat motors, of which 95 percent is deposited into the General Revenue Fund and the remaining five percent is deposited into Account 0009 - Game, Fish and Water Safety. The state imposes an insurance companies maintenance tax which is deposited into Account 0036 - Texas Department of Insurance Operating.

A portion of the motor vehicles sales tax, franchise tax and cigarette tax is deposited into Account 0304 - Property Tax Relief. The state also taxes the sale of fireworks, a portion of which is deposited into Account 5066 - Rural Volunteer Fire Department Insurance. In addition, part of the sales tax and a motor vehicles sales tax is deposited into Account 5071 - Emissions Reduction Plan. Furthermore, a portion of tobacco tax revenue is deposited into Account 5144 - Physician Education Loan Repayment Program.

Additionally, certain unappropriated General Revenue-Dedicated balances are used to certify General Revenue Fund appropriations as a result of funds consolidation. When General Revenue Fund appropriations exceed General Revenue Fund revenues, General Revenue-Dedicated balances are considered when determining how much General Revenue Fund appropriations are subject to the spending limit. To the extent that those General Revenue-Dedicated balances contain tax revenues not dedicated by the Constitution, the General Revenue-Dedicated balances are subject to the limit when appropriated.

Grand Total

A grand total of $111,049,672,164 in 2016-17 biennial appropriations is included in this analysis. Of this amount, $4,433,448,342 is financed out of taxes dedicated by the State Constitution. Another $14,118,190,811 is financed out of non-tax revenue. The remaining $92,498,033,011 is financed out of state tax revenue not dedicated by the State Constitution. This amount serves as the base for calculating the limitation on 2018-19 biennial appropriations from state tax revenue not dedicated by the Constitution, as required by Article VIII, Section 22, of the Texas Constitution.

Figure 1 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 1
U.S. DEPARTMENT OF COMMERCE PERSONAL
INCOME ACCOUNT FOR TEXAS, CALENDAR YEAR 2015
In Millions of Current Dollars

Earnings by Place of Work	**Amount**	**Percent of Total**
Wage and Salary Disbursements	$ 661,654	67.1%
Supplements to Wages and Salaries	137,507	14.0%
Proprietors' Income		
Farm	*$4,275*	
Nonfarm	*182,033*	
Subtotal	186,307	18.9%
Total Earnings by Place of Work	$985,468	100.0%
Derivation of Total Personal Income		
Earnings by Place of Work (from above)	$985,468	
Less: Personal Contributions for Social Insurance	*(49,963)*	
Less: Employee Contributions for Social Insurance	*(44,568)*	
Less: Adjustment for Residence	*(1,578)*	
Equals: Net Earnings by Place of Residence	$889,359	69.0%
Plus: Dividends, Interest and Rent	210,222	16.3%
Plus: Personal Current Transfer Receipts	190,023	14.7%
Total Personal Income	$1,289,604	100.0%

Note: Totals may not add due to rounding.

Source: U.S. Department of Commerce, Bureau of Economic Analysis, September 2016.

Figure 2 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 2
BIENNIUM-TO-BIENNIUM GROWTH RATES IN TEXAS PERSONAL INCOME
1982-83 TO 2014-15 BIENNIA

Base Biennium	Target Biennium	Growth Rate	Percent Increase
1980-81	1982-83	1.252	25.2
1982-83	1984-85	1.170	17.0
1984-85	1986-87	1.087	8.7
1986-87	1988-89	1.096	9.6
1988-89	1990-91	1.144	14.4
1990-91	1992-93	1.138	13.8
1992-93	1994-95	1.125	12.5
1994-95	1996-97	1.156	15.6
1996-97	1998-99	1.172	17.2
1998-99	2000-01	1.157	15.7
2000-01	2002-03	1.069	6.9
2002-03	2004-05	1.097	9.7
2004-05	2006-07	1.182	18.2
2006-07	2008-09	1.126	12.6
2008-09	2010-11	1.052	5.2
2010–11	2012-13	1.145	14.5
2012–13	2014-15	1.107	10.7

Figure 3 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 3
ESTIMATED GROWTH RATES FOR TEXAS PERSONAL INCOME
USING FIVE ECONOMETRIC MODELS
2016-17 BIENNIUM TO 2018-19 BIENNIUM

Source of Forecast	2018-19 Texas Personal Income Growth Rate
1. IHS	11.44%
2. Moody's Analytics	11.04%
3. Perryman Group	10.52%
4. Texas A&M University, Department of Economics	10.41%
5. Texas Comptroller of Public Accounts	9.99%

Figure 4 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

TABLE 4
SUMMARY OF SOURCES AND METHODS FOR
TEXAS PERSONAL INCOME GROWTH RATES FOR THE
2018-19 BIENNIUM

Source of Forecast	Type of Forecast	Date of Forecast
1. IHS	Econometric	November 2016
2. Moody's Analytics	Econometric	November 2016
3. Perryman Group	Econometric	October 2016
4. Texas A&M University, Department of Economics	Econometric	October 2016
5. Texas Comptroller of Public Accounts	Econometric	October 2016

Source: Compiled by the Legislative Budget Board, November 2016.

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

		2016 Expenditures/ 2017 Appropriations
I. General Revenue Related Funds		
A. Appropriations		
1. "Estimated To Be" Line Item Appropriations in General Appropriations Act, 84th Legislature		
(a)	Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims	2,236,843
(b)	Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax	405,681,567
(c)	Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands	10,835,774
(d)	Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property	470,449,464
(e)	Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion)	1,188,214,622
(f)	Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion)	3,415,482,563
(g)	Secretary of State B.1.5. Strategy: Voter Registration	1,370,944
(h)	Department of State Health Services Vendor Drug Rebates–Public Health	59,220,629
(i)	Department of State Health Services D.1.6. Strategy: TEXAS.GOV	1,512,423
(j)	Health and Human Services Commission Medicaid Program Income	138,060,133
(k)	Health and Human Services Vendor Drug Rebates—Medicaid	1,542,197,700
(l)	Health and Human Services Cost Sharing - Medicaid Clients	2,943,024
(m)	Health and Human Services Vendor Drug Rebates-Supplemental Rebates	154,475,541
(n)	Health and Human Services Premium Co-Payments, Low Income Children	9,953,615
(o)	Health and Human Services Experience Rebates-CHIP	3,320,648
(p)	Health and Human Services Vendor Drug Rebates-CHIP	7,594,773
(q)	Texas Education Agency B.3.6. Strategy: Certification Exam Administration	33,015,306
(r)	Teacher Retirement System A.1.1. Strategy: TRS - Public Education Retirement	3,094,425,558
(s)	Teacher Retirement System	372,161,367

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

	A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion)	
(t)	Teacher Retirement System	560,334,453
	A.2.1. Strategy: Retiree Health - Statutory Funds	
(u)	Optional Retirement Program	215,262,701
	A.1.1. Strategy: Optional Retirement Program (GR Portion)	
(v)	Office Of Court Administration, Texas Judicial Council	24,279
	C.1.2. Strategy: TEXAS.GOV	
(w)	Department Of Housing And Community Affairs	21,000
	E.1.4. Strategy: TEXAS.GOV	
(x)	Board Of Chiropractic Examiners	67,218
	A.1.2. Strategy: TEXAS.GOV	
(y)	Texas State Board Of Dental Examiners	436,169
	A.2.2. Strategy: TEXAS.GOV	
(z)	Funeral Service Commission	87,613
	A.1.2. Strategy: TEXAS.GOV	
(aa)	Board Of Professional Geoscientists	39,564
	A.1.2. Strategy: TEXAS.GOV	
(ab)	Department Of Insurance (GR Portion)	12,541
	A.3.3. Strategy: TEXAS.GOV	
(ac)	Board Of Professional Land Surveying	33,642
	A.1.3. Strategy: TEXAS.GOV	
(ad)	Department Of Licensing And Regulation	998,920
	A.1.5. Strategy: TEXAS.GOV	
(ae)	Texas Board of Nursing	1,194,602
	A.1.2. Strategy: TEXAS.GOV	
(af)	Optometry Board	39,880
	A.1.2. Strategy: TEXAS.GOV	
(ag)	Board Of Pharmacy	428,292
	A.1.2. Strategy: TEXAS.GOV	
(ah)	Executive Council Of Physical Therapy & Occupational Therapy Examiners	385,946
	A.1.2. Strategy: TEXAS.GOV	
(ai)	Board Of Plumbing Examiners	295,893
	A.1.2. Strategy: TEXAS.GOV	
(aj)	Board Of Podiatric Medical Examiners	10,485
	A.1.2. Strategy: TEXAS.GOV	
(ak)	Board Of Examiners Of Psychologists	70,868
	A.1.2. Strategy: TEXAS.GOV	
(al)	Board Of Veterinary Medical Examiners	58,146
	A.1.2. Strategy: TEXAS.GOV	
(am)	Multiple Agencies: Earned Federal Funds	118,203,429

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

	Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds		
(an)	Adjustment for Property Tax Relief Fund Revenue	(535,285,644)	
(ao)	Adjustment for Texas Education Agency Attendance Credit Revenue	182,176,514	
	Subtotal, "Estimated to Be" Line Items (Expended/ Appropriated)		$ 11,478,049,004
2.	Total Sum Certain Line Item Appropriations (Appropriated)		$ 94,330,144,469
	TOTAL General Revenue Related Fund Appropriations, *adjusted for 2016 estimated amounts*		$ 105,808,193,473

Figure 5 - 502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

B. Source of Funding - General Revenue Related	Total Appropriations	Constitutionally Dedicated State Tax Revenues	Non Tax Revenues	State Tax Revenue Not Dedicated by the Constitution
1. Occupation Taxes	$2,619,282,085	$2,619,282,085	$0	$0
2. Motor Fuel Taxes	1,832,645,090	1,814,166,257	-	18,478,833
3. Education Revenues	4,707,584,145	-	4,707,584,145	-
4. Insurance Maintenance Tax	291,242,370	-	-	291,242,370
5. Hotel Tax	68,472,634	-	-	68,472,634
6. Sporting Good Sales Tax	273,957,598	-	-	273,957,598
7. Beginning General Revenue Balance	3,736,587,277	-	330,657,243	3,405,930,034
8. Appropriations from Other Revenue	92,278,422,274	-	8,273,120,594	84,005,301,680
SUBTOTAL(General Revenue Related)	$ 105,808,193,473	$ 4,433,448,342	$ 13,311,361,982	$ 88,063,383,148
II. Appropriations from Funds Outside of GR				
1. Account 0009 – Game, Fish, and Water Safety	225,300,172	-	219,379,839	5,920,333
2. Account 0036 – Texas Department of Insurance Operating	130,809,782	-	127,471,042	3,338,740
3. Account 0304 – Property Tax Relief	3,485,185,644	-	2,020,192	3,483,165,452
4. Account 5066 – Rural Volunteer Fire Department Insurance	2,930,000	-	272	2,929,728
5. Account 5071 – Emissions Reduction Plan	237,187,093	-	150,737,840	86,449,253
6. Account 5144 - Physician Education Loan Repayment Program	33,800,000	-	-	33,800,000
7. Reduction in Certifiable GR-D Balances	1,126,266,000	-	307,219,645	819,046,355
GRAND TOTAL	$ 111,049,672,164	$ 4,433,448,342	$ 14,118,190,811	$ 92,498,033,011

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

General Revenue Funds "Recap" Amount	$53,429,505,880	$52,577,986,898	$106,007,492,778
Less "Estimated to Be" Items:			
Fiscal Programs - Comptroller of Public Accounts A.1.1. Strategy: Miscellaneous Claims (HB1, Article I-23)	14,860,294	14,860,294	29,720,588
Fiscal Programs - Comptroller of Public Accounts A.1.2. Reimbursement - Beverage Tax (HB1, Article I-23)	199,087,000	209,440,000	408,527,000
Fiscal Programs - Comptroller of Public Accounts A.1.4. County Taxes - University Lands (HB1, Article I-23)	4,669,970	4,996,869	9,666,839
Fiscal Programs - Comptroller of Public Accounts A.1.6. Unclaimed Property (HB1, Article I-25)	190,000,000	190,000,000	380,000,000
Funds Appropriated to the Comptroller for Social Security and BRP A.1.1. Strategy: State Match - Employer (GR Portion) & A.1.2 Benefit Replacement Pay (GR Portion) (HB1, Article I-28)	583,039,532	596,144,982	1,179,184,514
Employees Retirement System A. Goal: Administer Retirement Program (GR Portion) & B. Goal: Provide Health Program (GR Portion) (HB1, Article I-34)	1,649,645,432	1,769,908,608	3,419,554,040
Secretary of State B.1.5. Strategy: Voter Registration (HB1, Article I-86)	5,000,000	1,000,000	6,000,000
Department of State Health Services Vendor Drug Rebates–Public Health (HB1, Article II-48)	7,886,357	7,886,357	15,772,714
Department of State Health Services D.1.6. Strategy: TEXAS.GOV (HB1, Article II-50)	1,156,867	1,156,867	2,313,734

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

Health and Human Services Commission Medicaid Program Income (HB1, Article II-78)	75,000,000	75,000,000	150,000,000
Health and Human Services Vendor Drug Rebates—Medicaid (HB1, Article II-78)	645,730,031	697,416,071	1,343,146,102
Health and Human Services Cost Sharing - Medicaid Clients (HB1, Article II-78)	2,500,000	2,500,000	5,000,000
Health and Human Services Vendor Drug Rebates-Supplemental Rebates (HB1, Article II-78)	75,479,410	81,465,009	156,944,419
Health and Human Services Premium Co-Payments, Low Income Children (HB1, Article II-78)	4,596,733	4,872,537	9,469,270
Health and Human Services Experience Rebates-CHIP (HB1, Article II-78)	747,947	666,472	1,414,419
Health and Human Services Vendor Drug Rebates-CHIP (HB1, Article II-78)	1,776,638	1,621,399	3,398,037
Texas Education Agency B.3.6. Strategy: Certification Exam Administration (HB1, Article III-2)	16,184,588	16,184,588	32,369,176
Teacher Retirement System A.1.1. Strategy: TRS - Public Education Retirement (HB1, Article III-30)	1,551,265,878	1,582,291,196	3,133,557,074
Teacher Retirement System A.1.2. Strategy: TRS - Higher Education Retirement (GR Portion) (HB1, Article III-31)	222,920,462	231,758,217	454,678,679
Teacher Retirement System	278,304,826	283,870,923	562,175,749

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

A.2.1. Strategy: Retiree Health - Statutory Funds (HB1, Article III-31)			
Optional Retirement Program A.1.1. Strategy: Optional Retirement Program (GR Portion) (HB1, Article III-34)	130,670,819	128,087,008	258,757,827
Office Of Court Administration, Texas Judicial Council C.1.2. Strategy: TEXAS.GOV (HB1, Article IV-23)	10,290	12,571	22,861
Department Of Housing And Community Affairs E.1.4. Strategy: TEXAS.GOV (HB1, Article VII-2)	19,120	19,120	38,240
Board Of Chiropractic Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-6)	29,850	29,850	59,700
Texas State Board Of Dental Examiners A.2.2. Strategy: TEXAS.GOV (HB1, Article VIII-7)	250,000	250,000	500,000
Funeral Service Commission A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-10)	46,500	46,500	93,000
Board Of Professional Geoscientists A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-12)	25,000	25,000	50,000
Department Of Insurance (GR Portion) A.3.3. Strategy: TEXAS.GOV (HB1, Article VIII-18)	6,520	6,520	13,040
Board Of Professional Land Surveying A.1.3. Strategy: TEXAS.GOV (HB1, Article VIII-27)	17,150	17,150	34,300
Department Of Licensing And Regulation A.1.5. Strategy: TEXAS.GOV (HB1, Article VIII-29)	467,200	467,200	934,400
Texas Board of Nursing	645,398	645,398	1,290,796

Figure 6-502-Tax Relief Amendment Implementation-Limit on Growth of Certain State Appropriations

A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-38)			
Optometry Board A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-41)	18,625	18,625	37,250
Board Of Pharmacy A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-43)	173,463	173,463	346,926
Executive Council Of Physical Therapy & Occupational Therapy Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-45)	157,715	157,715	315,430
Board Of Plumbing Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-47)	155,000	155,000	310,000
Board Of Podiatric Medical Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-49)	5,000	5,000	10,000
Board Of Examiners Of Psychologists A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-51)	37,000	37,000	74,000
Board Of Veterinary Medical Examiners A.1.2. Strategy: TEXAS.GOV (HB1, Article VIII-64)	40,000	40,000	80,000
Multiple Agencies: Earned Federal Funds Sec. 13.11. Definition, Appropriation, Reporting and Audit of Earned Federal Funds (HB1, Article IX-63)	55,793,926	55,694,259	111,488,185
Subtotal, Estimated Appropriations	$5,718,420,541	$5,958,927,768	$11,677,348,309
Total Sum Certain Line Item Appropriations	$47,711,085,339	$46,619,059,130	$94,330,144,469

TRD-201605868
Ursula Parks
Director
Legislative Budget Board
Filed: November 16, 2016

♦ ♦ ♦

Texas Department of Licensing and Regulation

Public Notice - Dietitians Criminal Conviction Guidelines

On behalf of the Texas Commission of Licensing and Regulation, the Texas Department of Licensing and Regulation published a public notice regarding updates to its Criminal Conviction Guidelines to include the Dietitians program in the November 4, 2016 issue of the *Texas Register* (41 TexReg 8861). The public notice is being republished in its entirety to correct several references and editorial errors. The corrected public notice is as follows.

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at its regularly scheduled meeting

held October 5, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published on December 5, 2003 (28 TexReg 11018) to include the Dietitians program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

Senate Bill 202, 84th Legislature, Regular Session (2015), transferred the Dietitians program from the Texas Department of State Health Services to the Texas Department of Licensing and Regulation and amended Texas Occupations Code, Chapter 701. The statutory changes were effective September 1, 2015; the adopted rules became effective October 1, 2016; and the Department commenced all regulatory functions for the Dietitians program on October 3, 2016.

The Criminal Conviction Guidelines for the Dietitians program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Dietitians Advisory Board at its meeting on September 15, 2016, and received the Board's recommendation of approval.

The Criminal Conviction Guidelines for the Dietitians program are as follows:

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving children, the elderly or the disabled as victims.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a risk to the property of the clients.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Licensees would have access to the property of clients and their care givers, family and friends.

4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving fraud or deceptive trade practices

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/patient role. Persons who have a history of committing such crimes would pose a danger to the clients and their property.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Licensees would have access to the property of clients and their care givers, family and friends in locations such as but not limited to residences, private offices, schools and medical facilities.

4. Licensees are potentially involved in the billing of clients, filing of insurance claims and filing of government documents.

5. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving the possession, possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Persons who have a history of drug possession or dealing could potentially have drugs in their systems or deliver illegal drugs which would make them a danger to their clients or others.

4. This profession provides persons with this type of criminal history the opportunity to engage in further similar conduct.

Crimes involving being under the influence of alcohol or drugs.

Reasons:

1. Licensees interact with adults, the elderly, the disabled and children in a healthcare provider/client role. Persons who have a history of committing such crimes would pose a danger to the clients or others.

2. This profession involves close proximity to and physical contact with clients and their care givers, family, and friends in locations such as, but not limited to, residences, private offices, schools or medical facilities.

3. Persons with this type of criminal history could potentially have alcohol or drugs in their systems which would make them a danger to their clients or others.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at *www.tdlr.texas.gov.* You may also contact the Enforcement Division at (512) 539-5600 or by email at *enforcement@tdlr.texas.gov* to obtain a copy of the complete guidelines.

TRD-201605847
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: November 15, 2016

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1823 "10X the Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1823 is "10X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1823 shall be $2.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1823.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 5X SYMBOL, 10X SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $1,000, and $50,000.

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. 1823 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10
$2.00	TWO$
$4.00	FOR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN
$1,000	ONTH
$50,000	50TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1823), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1823-0000001-001.

H. Pack - A Pack of the "10X THE CASH" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 125 will be shown on the front of the Pack; the back of Ticket 125 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 Pack 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 125 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "10X THE CASH" Scratch Ticket Game No. 1823.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "10X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 23 (twenty-three) Play Symbols. If a player matches any of the YOUR NUMBERS Play Symbols to any the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 (five) TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 (ten) TIMES 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 Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 23 (twenty-three) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch 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 Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 23 (twenty-three) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 23 (twenty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 23 (twenty-three) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to 10 (ten) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have three (3) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than three (3) times.

G. The "5X" (TIMES5) and "10X" (TIMES10) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" (TIMES5) and "10X" (TIMES10) Play Symbols will only appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 20 and $20).

2.3 Procedure for Claiming Prizes.

A. To claim a "10X THE CASH" Scratch Ticket Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch 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 Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00 or $100 Scratch Ticket Game. 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 "10X THE CASH" Scratch Ticket Game prize of $1,000 or $50,000, the claimant must sign the winning Scratch 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 Scratch 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 "10X THE CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch 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 Scratch 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 "10X THE CASH" Scratch Ticket 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 "10X THE CASH" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket 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 Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the

player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 21,120,000 Scratch Tickets in Scratch Ticket Game No. 1823. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1823 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	2,365,440	8.93
$4	1,689,600	12.50
$5	506,880	41.67
$10	253,440	83.33
$20	168,960	125.00
$50	100,936	209.24
$100	14,080	1,500.00
$1,000	264	80,000.00
$50,000	16	1,320,000.00

*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 4.14. 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 Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1823 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1823, 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-201605836
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 14, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1824 "20X the Cash"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1824 is "20X THE CASH". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1824 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1824.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch 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: 01, 02, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000, $10,000 and $250,000.

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. 1824 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
36	TRSX
37	TRSV
38	TRET
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10
20X SYMBOL	TIMES20
$5.00	FIV$
$10.00	TEN$

$15.00	FFN$
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$250,000	250TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. 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 Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1824), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1824-0000001-001.

H. Pack - A Pack of the "20X THE CASH" Scratch Ticket Game 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 Pack 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.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "20X THE CASH" Scratch Ticket Game No. 1824.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "20X THE CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of the 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 "5X" Play Symbol, the player wins 5 (five) TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 (ten) TIMES the prize for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 (twenty) TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 46 (forty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch 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 Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 46 (forty-six) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch

Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbols and Prize Symbols in the same spots.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "5X" (TIMES5), "10X" (TIMES10) and "20X" (TIMES20) Play Symbols will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "5X" (TIMES5), "10X" (TIMES10) and "20X" (TIMES20) Play Symbols will only appear as dictated by the prize structure.

I. Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "20X THE CASH" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch 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 Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. 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 "20X THE CASH" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch 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 Scratch 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 "20X THE CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch 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 Scratch 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 "20X THE CASH" Scratch Ticket 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 "20X THE CASH" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket 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 Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 23,520,000 Scratch Tickets in Scratch Ticket Game No. 1824. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1824 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$5	2,508,800	9.38
$10	3,292,800	7.14
$20	627,200	37.50
$50	313,600	75.00
$100	25,284	930.23
$500	1,568	15,000.00
$1,000	176	133,636.36
$10,000	28	840,000.00
$250,000	10	2,352,000.00

*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 3.47. 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 Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1824 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1824, the State Lottery Act (Texas Government Code, Chap-

ter 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-201605837
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 14, 2016

♦ ♦ ♦

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is soliciting proposals from qualified entities to organize and operate an integrated one-stop service delivery system to deliver workforce development and child care program services in the 26 counties of the Texas Panhandle Workforce Development Area under a single contract.

Workforce Development and Child Care program services provided through the service delivery system include, but are not be limited to, those funded and governed by the Workforce Innovation and Opportunity Act, Wagner-Peyser Employment Services, Temporary Assistance for Needy Families and Noncustodial Parent/CHOICES, Supplemental Nutrition Assistance Program Employment and Training, and Child Care grants.

Proposers will be expected to demonstrate the capability to conduct workforce service delivery for all customers groups at the current level and also effectively incorporate the Panhandle Workforce Development Board's stated priorities. The initial term for any award resulting from this solicitation will be one year with the possibility for renewal for up to three additional years.

The proposal schedule is expected to be as follows:

Release Request for Proposals (RFP) - November 18, 2016

Proposers' Conference - December 2, 2016 at 1:30 p.m.

Questions may be submitted in writing to wdrfpquestions@theprpc.org - no later than December 5, 2016 at 3:00 p.m.

Deadline for Submission - January 13, 2017 at 3:00 p.m.

A copy of the Request for Proposals (RFP) can be obtained Monday through Friday, 8:00 a.m. to 5:00 p.m., at 415 Southwest Eighth Ave., Amarillo, Texas 79101 or by download from the Workforce Development section of the Panhandle Regional Planning Commission website at http://www.theprpc.org/Programs/WorkforceDevelopment/wfprocurement.html.

An Equal Opportunity Employer / Program

Auxiliary aids and services are available upon request to individuals with disabilities.

Relay Texas: 711

TRD-201605785
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: November 10, 2016

♦ ♦ ♦

Public Utility Commission of Texas

Notice of Application to Amend a Service Provider Certificate of Operating Authority

On November 10, 2016, TerraCom, Inc. d/b/a Texas TerraCom and Global Reconnect, Inc. filed an application with the Public Utility Commission of Texas to amend service provider certificate of operating authority number 60758, reflecting a change in ownership/control.

Docket Style and Number: Application of TerraCom, Inc. d/b/a Texas TerraCom and Global Reconnect, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46565.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than December 20, 2016. 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 46565.

TRD-201605865
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2016

♦ ♦ ♦

Notice of Application to Amend a Service Provider Certificate of Operating Authority

On November 14, 2016, Phonoscope Lightwave, Inc., filed an application with the Public Utility Commission of Texas to amend service provider certificate of operating authority number 60930, reflecting a name change.

Docket Style and Number: Application of Phonoscope Lightwave, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46566.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than December 29, 2016. 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 46566.

TRD-201605866
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 16, 2016

♦ ♦ ♦

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing of an application to amend a water certificate of convenience and necessity in Collin County.

Docket Style and Number: Application of City of Lucas to Amend a Certificate of Convenience and Necessity in Collin County, Docket Number 46558.

The Application: City of Lucas filed an application to amend its water certificate of convenience and necessity no. 10193 in Collin County.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas

78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46558.

TRD-201605857
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 15, 2016

♦ ♦ ♦

Texas Department of Transportation

Request for Information - Toll Operations Division

The Texas Department of Transportation (department) is seeking information that may assist in the identification of Tri-Protocol Readers currently in development or production that support SeGo, 6C and TDM IAG protocols. This Request for Information (RFI) is issued for the purpose of obtaining information to assist the department in its planning process and to identify vendors that may be interested in responding to any future solicitation documents.

This RFI does not constitute a Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation document, nor does it represent an intention to issue an RFQ or an RFP in the future. This RFI does not commit the department to contract for any supply or service whatsoever, nor will any response to this RFI be considered in the evaluation of any response to a solicitation document. The department will not pay for any information or administrative cost incurred in response to this RFI.

RFI Issuance Date: November 25, 2016

RFI Response Deadline: December 23, 2016, at 3:00 p.m. CST

RFI Website and Addenda: Additional information regarding the RFI, including submission requirements, may be found on the RFI website at *http://www.txdot.gov/business/opportunities/toll-ops-Triple-Protocol-Reader-rfi.html.* The department will post any addenda to the RFI on the RFI website. It is the respondent's responsibility to monitor the RFI website on a regular basis for updates, questions and responses, addenda, and additional RFI documents and information. The department reserves the right to modify the schedule milestones at any time and for any reason. At its option, the department may also elect to follow-up directly with respondents with more detailed questions or to clarify submissions.

Questions: Questions regarding this RFI should be submitted in writing to the Point of Contact at the email address listed below. The department will post responses to questions on the RFI website without identifying the party(ies) submitting the questions. Respondents are encouraged to submit questions prior to December 8, 2016.

Contracting Office Address:

Texas Department of Transportation - Toll Operations Division

12719 Burnet Road

Austin, Texas 78727

Point of Contact:

Brian Smallwood

Texas Department of Transportation - Toll Operations Division

Phone: (512) 874-9735

Email: *Tod_Mail@TxDOT.gov*

TRD-201605869
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 16, 2016

♦ ♦ ♦

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

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

...

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.

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is $382 annually for first-class mail delivery and $259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis®
It's how you know™