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# TEXAS REGISTER

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# IN THIS ISSUE

## **GOVERNOR**

Appointments .....2157

## **TEXAS ETHICS COMMISSION**

Ethics Advisory Opinions .....2159

## **PROPOSED RULES**

### **STATE PRESERVATION BOARD**

#### RULES AND REGULATIONS OF THE BOARD

13 TAC §111.27 .....2161

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.100 .....2162

### **TEXAS MEDICAL BOARD**

#### MEDICAL RECORDS

22 TAC §§165.7 - 165.9 .....2164

### **TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION**

#### DISPUTE RESOLUTION--AGREEMENTS, SETTLEMENTS, COMMUTATIONS

28 TAC §§147.1 - 147.3, 147.6, 147.8, 147.9 .....2167

28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, 147.11 .....2168

### **COMPTROLLER OF PUBLIC ACCOUNTS**

#### FUNDS MANAGEMENT (FISCAL AFFAIRS)

34 TAC §5.480 .....2170

#### COMPTROLLER GRANT PROGRAMS

34 TAC §§16.1, 16.3, 16.4, 16.8 - 16.10, 16.12 .....2171

## **WITHDRAWN RULES**

### **TEXAS STATE BOARD OF PLUMBING EXAMINERS**

#### ADMINISTRATION

22 TAC §361.1 .....2175

## **ADOPTED RULES**

### **RAILROAD COMMISSION OF TEXAS**

#### GAS SERVICES

16 TAC §7.480 .....2177

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

16 TAC §24.240 .....2185

### **TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

#### RULES OF PROFESSIONAL CONDUCT

22 TAC §501.62 .....2193

#### FEE SCHEDULE

22 TAC §521.9 .....2194

### **TEXAS PARKS AND WILDLIFE DEPARTMENT**

#### EXECUTIVE

31 TAC §51.143 .....2194

### **TEXAS JUVENILE JUSTICE DEPARTMENT**

#### AGENCY MANAGEMENT AND OPERATIONS

37 TAC §§385.8101, 385.8117, 385.8136, 385.8137, 385.8141, 385.8153, 385.8161, 385.8163 .....2195

37 TAC §§385.9959, 385.9967, 385.9993 .....2195

## **TRANSFERRED RULES**

### **Department of State Health Services**

Rule Transfer .....2197

### **Health and Human Services Commission**

Rule Transfer .....2197

## **RULE REVIEW**

### **Proposed Rule Reviews**

Texas Health and Human Services Commission .....2203

Texas Alcoholic Beverage Commission .....2203

Department of State Health Services .....2203

Texas Health and Human Services Commission .....2204

Department of Aging and Disability Services .....2205

### **Adopted Rule Reviews**

Texas Health and Human Services Commission .....2205

## **IN ADDITION**

### **Alamo Area Metropolitan Planning Organization**

Request for Proposals - NB Transit Connection Study .....2207

### **Texas Alcoholic Beverage Commission**

Annual Production Limit Order .....2207

### **Office of the Attorney General**

Texas Water Code and Texas Health and Safety Code Settlement Notice .....2208

### **Office of Consumer Credit Commissioner**

Notice of Rate Ceilings .....2209

### **Texas Commission on Environmental Quality**

Agreed Orders .....2209

Enforcement Orders .....2212

Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175361 .....2213

Notice of District Petition .....2213

Notice of District Petition .....2214

Notice of District Petition .....2215

Notice of District Petition .....2215

Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions .....2216

Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Slott Construction Company, Inc. SOAH Docket No. 582-24-14286 TCEQ Docket No. 2022-0287-WQ-E .....2216

**General Land Office**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....2217

**Texas Health and Human Services Commission**

Notice of Public Hearing on Long-Range Planning for State Supported Living Centers.....2218

Notice of Public Hearing on the Proposed Interim Reimbursement Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) for Fiscal Year 2024 .....2219

**Department of State Health Services**

Licensing Actions for Radioactive Materials .....2219

**Public Utility Commission of Texas**

Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider.....2228

**Texas Water Development Board**

Request for Applications Statewide Water Awareness Campaign.2229

# 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 March 21, 2024

Appointed to the Education Commission of the States for a term to expire at the pleasure of the Governor, Brad Buckley, D.V.M. of Salado, Texas (replacing Dan Huberty of Humble).

Appointed to the Education Commission of the States for a term to expire at the pleasure of the Governor, Brandon Creighton of Conroe, Texas (replacing Larry Taylor of Friendswood).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2030, Ogechika K. "Oge" Alozie, M.D., of El Paso, Texas (Mr. Alozie is being reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2030, Taylor A. Gillig of Bedford, Texas (Mr. Gillig is being reappointed).

Appointed to the Texas Medical Board District Three Review Committee for a term to expire January 15, 2030, Gabrielle H. Rich, D.O. of Big Spring, Texas (Ms. Rich is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2025, Carla Elizabeth Smith of Midland, Texas (replacing Catherine A. "Cathy" Wilson of Austin, who resigned).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2029, Amanda C. Burnett of Bastrop, Texas (Ms. Burnett is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2029, Audrey J. Ramsbacher of San Antonio, Texas (replacing Dennis R. Myers, Ph.D. of Waco, whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2029, Donna Beth Stauber, Ph.D. of China Spring, Texas (replacing Sheila M. Haley, Ph.D. of Lantana, whose term expired).

### Appointments for March 22, 2024

Appointed to the Jobs and Education for Texans Grant Program Advisory Board for a term to expire June 19, 2025, Robert C. Uhl of Farmers Branch, Texas (replacing William P. "Will" Conley of Wimberley, whose term expired).

Designating Michael L. "Mike" Boyd of Christoval as presiding officer of the Texas Military Preparedness Commission for a term to expire

at the pleasure of the Governor. General Boyd is replacing Kevin E. Pottinger of Keller as presiding officer.

### Appointments for March 26, 2024

Pursuant to HB 3447, 88th Legislature, Regular Session, appointed to the Texas Aerospace Research and Space Economy Consortium Executive Committee for a term to expire at the pleasure of the Governor, Stephanie N. Murphy of Seabrook, Texas.

Pursuant to HB 3447, 88th Legislature, Regular Session, appointed to the Texas Aerospace Research and Space Economy Consortium Executive Committee for a term to expire at the pleasure of the Governor, Rodney M. "Matt" Ondler of Houston, Texas.

Pursuant to HB 3447, 88th Legislature, Regular Session, appointed to the Texas Space Commission Board of Directors to serve at the pleasure of the Governor for a term to be determined by state law, Gwendolyn D. "Gwen" Griffin of Kemah, Texas.

Pursuant to HB 3447, 88th Legislature, Regular Session, appointed to the Texas Space Commission Board of Directors to serve at the pleasure of the Governor for a term to be determined by state law, Kathryn L. "Kathy" Lueders of Brownsville, Texas.

Pursuant to HB 3447, 88th Legislature, Regular Session, appointed to the Texas Space Commission Board of Directors to serve at the pleasure of the Governor for a term to be determined by state law, John P. Shannon of Houston, Texas.

### Appointments for March 27, 2024

Appointed to the State Board for Educator Certification for a term to expire February 1, 2027, Bobbie Lynn Weir of Dallas, Texas (replacing Cristina I. Galindo of Houston, who resigned).

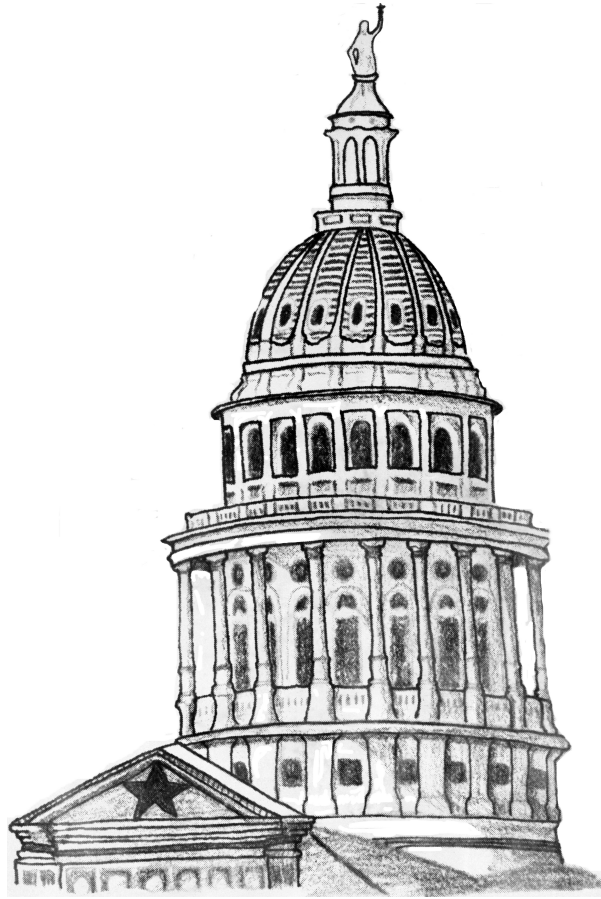
Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2027, Cynthia T. "Cindy" Conroy of El Paso, Texas (replacing Brandon A. Batch of Midland, who resigned).

Appointed to the Texas Department of Housing and Community Affairs for a term to expire January 31, 2029, Leopoldo R. "Leo" Vasquez, III of Houston, Texas (Mr. Vasquez is being reappointed).

Greg Abbott, Governor

TRD-202401292





# TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Ethics Advisory Opinions

EAO-601: How various provisions of title 15 of the Texas Election Code apply to a Texas "purpose trust" formed under Section 112.121, Texas Property Code. (AOR-697).

### SUMMARY

A trust is not a separate legal entity and therefore not a distinct "person" for the purposes of determining political committee status and the application of campaign finance rules generally. Therefore, the general campaign finance restrictions and reporting rules apply to the people comprising the trust, i.e., the people funding or making contribution or expenditure acceptance decisions on behalf of the trust.

The people providing money to a trust and deciding how money will be spent on behalf of a trust may be treated as a Texas political committee if, just like any other group of people acting in concert, they meet the generally applicable criteria for forming a political committee.

A purpose trust comprised entirely of funds from an individual is not subject to the corporate contribution ban under Section 253.093 of the Election Code and may make political contributions to candidates, officeholders, and political committees.

A purpose trust that is not a political committee will be subject to the corporate contribution ban if the trust organizes itself as a corporation even it incorporates for liability purposes only.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on March 20, 2024.

TRD-202401276

James Tinley  
General Counsel  
Texas Ethics Commission  
Filed: March 26, 2024



EAO-602: Whether employees of a state agency may provide a list of preferred items to non-profit entities that would be used in carrying out the agency's mission, if the gifts are not provided to employees for their personal use or enjoyment. (AOR-698).

### SUMMARY

Under the facts presented, the solicitations would be for gifts to the agency rather than individual employees. Therefore, the Penal Code gift restrictions would not apply. Whether an agency may solicit or accept gifts is governed by other law specifically applicable to that agency, over which the Ethics Commission has no interpretive authority.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on March 20, 2024.

TRD-202401277

James Tinley  
General Counsel  
Texas Ethics Commission  
Filed: March 26, 2024



EAO-603: Where must candidates for an appraisal district's board of directors file campaign treasurer appointments and campaign finance reports? (AOR-699, 701).

### SUMMARY

A candidate for an appraisal district's board of directors must file campaign treasurer appointments and campaign finance reports with the clerk or secretary of the appraisal district. If the appraisal district does not have a clerk or secretary, the reports must be filed with the appraisal district's presiding officer.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on March 20, 2024.

TRD-202401278

James Tinley  
General Counsel  
Texas Ethics Commission  
Filed: March 26, 2024

EAO-604: Whether the purchase of a storage trailer is a normal overhead, administrative, or operating cost of a political party such that contributions from a corporation may be accepted and used for its purchase. (AOR-700).

**SUMMARY**

The political party may use contributions from corporations to purchase a storage trailer because the trailer is a normal overhead cost.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on March 20, 2024.

TRD-202401279  
James Tinley  
General Counsel  
Texas Ethics Commission  
Filed: March 26, 2024

◆ ◆ ◆  
EAO-605: Whether a state university may provide prizes to randomly selected attendees of sporting events under Chapter 36 of the Penal Code when the recipient of the prize may be a university employee. (AOR-702).

**SUMMARY**

Under the facts presented, providing prizes to attendees of sporting events would not be prohibited by Chapter 36 of the Penal Code even if a university employee receives a prize after being selected at random.

The Texas Ethics Commission is authorized by Section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on March 20, 2024.

TRD-202401280  
James Tinley  
General Counsel  
Texas Ethics Commission  
Filed: March 26, 2024

# 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 13. CULTURAL RESOURCES

### PART 7. STATE PRESERVATION BOARD

#### CHAPTER 111. RULES AND REGULATIONS OF THE BOARD

##### 13 TAC §111.27

1. Introduction: The State Preservation Board (SPB) proposes the amendment of 13 TAC §111.27(b)(2), concerning General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds. Section 111.27 is being amended to change the terminology from "seeing eye" dogs to "service" dogs.

The SPB proposes the amendment in response to SB 2333, 88 Reg. which changes the language in Texas Government Code §443.018(b) and requires the same change to the Texas Administrative Code.

2. Fiscal Note: Ms. Cindy Provine, Chief Financial Officer, has determined for each year of the first five years the proposed amendment is in effect, there will be no adverse fiscal impact to state or local governments because of this proposal. There will be no measurable effect on local employment or the local economy because of the proposal. Therefore, a local employment impact statement under Government Code §2001.022 is not required.

3. Public Benefit/Cost Note: Ms. Provine has also determined that for each year of the first five years the proposed amendment is in effect, there is no change to public benefit. She has further determined that there will be no economic cost to any member of the public or any other public or private entity.

Government Code §2001.0045 requires a state agency to offset any costs associated with a proposed rule by (1) repealing a rule imposing a total cost that is equal to or greater than that of the proposed rule; or (2) amending a rule to decrease the total costs imposed by an amount that is equal to or greater than the cost of the proposed rule. As described above, the SPB has determined that the proposed amendment will not impose any cost on anyone, and so §2001.0045 does not apply.

4. Government Growth Impact Statement: Government Code §2001.0221 requires that a state agency prepare a government growth impact statement that reasonably describes what effects a proposed rule may have during the first five years it is in effect. The SPB has determined that the proposed amendment will not create or eliminate a government program, and will not require an increase or decrease in fees paid to the agency. Implementation of the proposal will not require the creation or elimination of employee positions and will not require an increase or decrease

in further legislative appropriations to the agency. The proposal does repeal an existing procedural rule regarding voluntary conduct, but it does not create a new prescriptive or proscriptive regulation, or expand, limit, or repeal such a regulation. Though the public's ability to seek to display exhibits in the Capitol through this program will be eliminated, the regulation was not prescriptive. Thus, the number of individuals whose conduct is subject to the rule's applicability is neither increased nor decreased by the proposal, and the proposal has no impact on the state's economy.

5. Economic Impact Statement and Regulatory Flexibility Analysis: The SPB has determined the proposed rule amendment will not have an economic effect on small businesses, micro businesses, or rural communities. Therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code §2006.002(c).

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

7. Request for Public Comment: To comment on the proposal, submit written comments by 5:00 p.m. (Central) on May 6, 2024, to [spbadmin@tspb.texas.gov](mailto:spbadmin@tspb.texas.gov). Please add the words Rule Comments in the subject line. A request for public hearing must be in writing and sent separately from any written comments. Send these requests to [spbadmin@tspb.texas.gov](mailto:spbadmin@tspb.texas.gov).

8. Statutory Authority: This action is requested under Texas Government Code §443.007(b), which authorizes the SPB to adopt rules concerning certain buildings, their contents, and their grounds.

The proposed amendment affects no other code, article, or statute.

*§111.27. General Rules for Use of the Capitol, Capitol Extension, and Capitol Grounds.*

(a) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purpose are prohibited from:

(1) attaching signs, banners, or other displays to a part of the Capitol or to a structure, including a fence, on the grounds of the Capitol except as approved by the board;

(2) placing furniture in the Capitol or on the grounds of the Capitol for a period that exceeds 24 hours except as approved by the board;

(3) setting up or placing camping equipment, shelter, tents, or related materials in the Capitol or on the grounds of the Capitol except as approved by the board for special events;

- (4) blocking ingress and egress:
- (A) into the Capitol; or
  - (B) into rooms or hallways within the Capitol, except as approved by the board;
- (5) conducting actions that pose a risk to safety;
- (6) smoking in the public areas of the Capitol and Capitol extension;
- (7) bringing balloons into the Capitol or Capitol extension; and
- (8) riding, leading, placing or displaying livestock, including but not limited to equine and bovine animals, except as approved by the board as part of a scheduled event, or as needed for security purposes.
- (b) Visitors and persons using the Capitol, Capitol extension, or Capitol grounds for any purposes shall be required to:
- (1) leave the Capitol when the building is closed to the public; and
  - (2) restrain pets at all times on a leash or similar device in the immediate control of the owner while on the grounds of the Capitol, except as approved by the board. All pets except service dogs [Seeing Eye dogs] are not permitted in the Capitol.
- (c) The board may require and collect a standardized fee from a person or entity that uses the Capitol, the Capitol extension, or the grounds of the Capitol for an event, exhibit, or other scheduled activity. The fee is in an amount set by the board designed to recover the estimated direct and indirect costs to the state of the event, exhibit or activity, including the costs of labor, materials, and utilities directly or indirectly attributable to the event, exhibit, or activity. The office of the State Preservation Board shall set the amounts of fees required under this section in a uniform and nondiscriminatory manner for similar events, exhibits, or other scheduled activities.
- (d) Except as provided by this subsection, the sale or consumption of alcoholic beverages, the possession of an open container of an alcoholic beverage, or the gift of an alcoholic beverage in an open container or for on-premises consumption is prohibited in the Capitol, in the Capitol extension, and on the Capitol grounds. This prohibition does not apply to:
- (1) areas not under the control of the board, including offices, reception areas, and similar areas under the control of the legislature, a legislative agency, the governor, or another state officer; or
  - (2) events of significant importance to the history of the Capitol that are conducted in areas under the control of the board and for which the office of the State Preservation Board has approved consumption of alcoholic beverages in response to a written request from the sponsor of the event that documents the importance of the event to the history of the Capitol.
- (e) The buildings and grounds under the authority of the board shall not be used for the commercial benefit of any individual, business, corporation, special interest group, or other entity.
- (f) For the safety of the public, skateboarding, roller skating, roller blading, and related activities are prohibited in the building, garages, and grounds under the authority of the State Preservation Board.
- (g) TV satellite trucks may not park on the Capitol drive. TV transmission cables may not be brought into the Capitol or Capitol extension.

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

Filed with the Office of the Secretary of State on March 19, 2024.

TRD-202401214

Rod Welsh

Executive Director

State Preservation Board

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 463-4180

◆ ◆ ◆

## TITLE 16. ECONOMIC REGULATION

### PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

#### CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

##### 16 TAC §70.100

The Texas Department of Licensing and Regulation (Department) proposes an amendment to existing rules at 16 Texas Administrative Code (TAC), Chapter 70, §70.100(a), regarding the Industrialized Housing and Buildings program. This proposed change is referred to as the "proposed rule."

##### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rule under 16 TAC, Chapter 70, implements Texas Occupations Code, Chapter 1202, Industrialized Housing and Buildings.

The proposed rule amendment at §70.100(a) would revise the date on which the industry would begin implementing the 2021 editions of the International Building Codes, the 2020 National Electrical Code, and their amendments. The proposed rule amends the date for industry implementation to July 1, 2024.

##### *Code Council Recommendations*

This rulemaking is solely for the revision of the date the industry is to begin implementation of the 2021 editions of the International Building Codes, the 2020 National Electrical Code, and their amendments. The agency has performed outreach to the industry and is not enforcing the date currently shown in the rule section. As the only amendment to the rules is the date of implementation and time is of the essence, it is not necessary to consult the Code Council.

##### SECTION-BY-SECTION SUMMARY

The proposed rules amend §70.100(a) to revise the effective date of the mandatory building codes to July 1, 2024.

##### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rule.

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there is no estimated increase or loss in revenue to



the state or local government as a result of enforcing or administering the proposed rule.

Mr. Couvillon has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rule will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit of delaying the date for implementation will be the increased time the public and Industrialized Manufacturers and Builders will have to ensure compliance with the 2021 International Building Codes and the 2020 National Electrical Code and their amendments.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule.

#### FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

#### ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rule does not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

#### GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rule will be in effect, the agency has determined the following:

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rule does not require an increase or decrease in fees paid to the agency.

5. The proposed rules does not create a new regulation.

6. The proposed rule does not expand, limit, or repeal an existing regulation.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rule and the proposed rule does not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule does not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

#### PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at <https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Shamica Mason, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1202, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposed rule.

§70.100. *Mandatory Building Codes.*

(a) Effective July 1, 2024 [~~April 1, 2024~~], all industrialized housing and buildings, modules, and modular components, shall be constructed in accordance with the codes referenced in subsection (c) - (j). The 2015 editions of the International codes as identified in subsection (c) - (i), as well as the 2014 edition of the *National Electrical Code* identified in subsection (j), shall remain in effect through June 30, 2024 [~~March 31, 2024~~]. All work permitted or started before July 1, 2024 [~~April 1, 2024~~], may be completed with the 2015 editions of the International codes and the 2014 edition of the *National Electrical Code*.

(b) - (k) (No change.)

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

Filed with the Office of the Secretary of State on March 22, 2024.

TRD-202401257



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 165. MEDICAL RECORDS

##### 22 TAC §§165.7 - 165.9

The Texas Medical Board (Board), TAC 22, proposes new §165.7, concerning Exceptions to Abortion Ban, §165.8, concerning Abortion Ban Exception Performance and Documentation, and §165.9, concerning Complaints Regarding Abortions Performed.

The new sections do not regulate or prohibit abortion but are promulgated to clarify the regulatory analysis to be utilized by the Board in the event that the agency receives a complaint and must determine what is, if any, an appropriate disciplinary action against a physician who violates other laws that regulate or prohibit abortion.

The rules reaffirm that when investigating a complaint regarding allegations of performing an abortion, the Board will investigate the complaint utilizing the standard processes that apply to every other complaint and investigation. This clarifying language is a direct result of recent litigation and requests from private individuals and groups.

The proposed new sections are as follows:

New §165.7, titled Definitions, describes the specific definitions for certain terms used in this section.

New §165.8, titled Abortion Ban Exception Performance and Documentation, explains that physicians need to comply with all applicable laws, rules and court opinions related to abortion and its exceptions in Texas. The rules also provide the minimum required information that must be included in the medical record.

New §165.9, titled Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing these proposed sections will be to clarify the laws and minimum requirements the Board will utilize in regard to determining exceptions to the prohibition on abortions.

Mr. Freshour has also determined that for the first five-year period the proposed new sections are in effect, there will be no fiscal impact or effect on government growth as a result of enforcing the proposed sections.

Mr. Freshour has also determined that for the first five-year period these proposed new sections are in effect there will be no probable economic cost to individuals required to comply with these proposed sections.

Pursuant to Texas Government Code §2006.002, the agency provides the following economic impact statement for the proposed new sections and determined that for each year of the first five years the new sections will be in effect there will be no effect on small businesses, micro businesses, or rural communities. The agency has considered alternative methods of achieving the purpose of the proposed new sections and found none.

Pursuant to Texas Government Code §2001.024(a)(4), Mr. Freshour certifies that this proposal has been reviewed and the agency has determined that for each year of the first five years these new sections are in effect:

(1) there is no additional estimated cost to the state or to local governments expected as a result of enforcing or administering the proposed new sections;

(2) there are no estimated reductions in costs to the state or to local governments as a result of enforcing or administering the new sections;

(3) there is no estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the new sections; and

(4) there are no foreseeable implications relating to cost or revenues of the state or local governments with regard to enforcing or administering the proposed new sections.

Pursuant to Texas Government Code §2001.024(a)(6) and §2001.022, the agency has determined that for each year of the first five years the proposed new sections will be in effect, there will be no effect on local economy and local employment.

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed new sections. For each year of the first five years these proposed new sections will be in effect, Mr. Freshour has determined the following:

(1) These proposed new sections do not create or eliminate a government program.

(2) Implementation of these proposed new sections does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of these proposed new sections does not require an increase or decrease in future legislative appropriations to the agency.

(4) These proposed new sections do not require an increase or decrease in fees paid to the agency.

(5) These proposed new sections do not create new regulations.

(6) These proposed new sections do not repeal existing regulations. These proposed new sections do not expand or limit an existing regulation.

(7) These proposed new sections do not increase the number of individuals subject to the sections' applicability.

(8) These proposed new sections do not positively or adversely affect this state's economy.

Comments on the proposal may be submitted to <https://forms.office.com/g/rS4ea217Ym>. A public hearing will be held at a later date.

The new rules are proposed under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority

for the Board to recommend and adopt rules and bylaws as necessary to perform its duties and enforce this subtitle.

No other statutes, articles or codes are affected by this proposal.

§165.7. Definitions.

The following words and terms, when used in this section, shall have the following meanings:

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy. This definition is found at Chapter 245, Section 245.002(1) of the Texas Health and Safety Code.

(2) "Ectopic pregnancy" means the implantation of a fertilized egg or embryo outside of the uterus and removing an ectopic pregnancy is not an abortion. This definition is found at Chapter 245, Section 245.002(4-a) of the Texas Health and Safety Code.

(3) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, Section 21.002(11-a) of the Texas Labor Code.

(4) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, Section 171.002(3) of the Texas Health and Safety Code.

(5) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, Section 170A.001(4) of the Texas Health and Safety Code.

§165.8. Abortion Ban Exception Performance and Documentation.

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must specifically document in the patient's medical record:

(1) that the abortion is performed in response to a medical emergency;

(A) that places the woman in danger of death unless the abortion is performed or induced; or

(B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;

(2) the major bodily function(s) at serious risk of substantial impairment;

(3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;

(4) how the danger of death or serious risk was determined;

(5) how the decision was made to proceed with an abortion based on reasonable medical judgement including:

(A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and

(B) what alternative treatments were attempted and failed or were ruled out;

(6) how the determination was made that performing a procedure in such a way as to give the child the best opportunity to survive would create a greater risk to the woman; and

(7) whether there was adequate time to transfer the patient, by any means available to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

§165.9. Complaints Regarding Abortions Performed.

(a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.

(b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in Texas Occupations Code, Section 154.0561, to review the available information, including the patient's medical record.

(c) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

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

Filed with the Office of the Secretary of State on March 25, 2024.

TRD-202401262

Scott Freshour

General Counsel

Texas Medical Board

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 305-7016



## TITLE 28. INSURANCE

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

#### CHAPTER 147. DISPUTE RESOLUTION-AGREEMENTS, SETTLEMENTS, COMMUTATIONS

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC

§147.4, concerning filing and effective dates for agreements in the dispute resolution process; §147.5, concerning settlements in the dispute resolution process; §147.7, concerning the effect on previously entered decisions and orders for agreements and settlements; §147.10, concerning the commutation of impairment income benefits; and 147.11, concerning notification to DWC of proposed judgments and settlements. DWC proposes to repeal §147.1, concerning definitions; §147.2, concerning the form of agreements and settlements; §147.3, concerning the execution of agreements and settlements; §147.6, concerning settlement conferences; §147.8, concerning the withdrawal from a settlement; and §147.9, concerning requirements for agreements and settlements. DWC proposes to adopt new §147.1, concerning the form and execution of agreements and settlements. Chapter 147 implements Texas Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258.

**EXPLANATION.** Amending Chapter 147 is necessary to organize the chapter and remove unnecessary rules to update and streamline the process. Some sections will be deleted because they repeat the Labor Code or require DWC to perform actions that are unnecessary and not required by statute. The amendments are also necessary to remove references to penalties specific to certain violations of agreements and settlements since penalties are addressed in Labor Code Chapter 415 and 28 TAC 180.

The amendments will also condense some sections into others so the chapter is more organized and easier to navigate; remove some sections and subsections that are outdated and unnecessary; update citations; remove obsolete references; and make plain language updates and agency style editorial changes.

Section 147.1 provides a statutory reference to definitions in the dispute resolution process. The repeal of §147.1 removes the reference to the definitions within the section, which are "agreement" and "settlement," because these definitions exist in Labor Code §401.011. Sections 147.2 and 147.3 will move into new §147.1, which will replace the repealed text, to better organize the chapter. Also, §147.1 will be renamed to better reflect its purpose.

Section 147.2 provides that agreements and settlements must be on a form prescribed by DWC and specifies which forms to use. DWC proposes repealing §147.2 and moving §147.2(a), which requires that an agreement or settlement of the dispute resolution process be on a form prescribed by DWC, to §147.1 to better organize the chapter. Subsections 147.2(b) and 147.2(c), which specify certain DWC forms to use, will be repealed because our website contains these forms, and the website is easy to navigate.

Section 147.3 concerns the execution of agreements and settlements in the dispute resolution process. The existing subsections under §147.3 will move to new §147.1 to better organize the rule, and §147.3 will be repealed.

Section 147.4 concerns filing agreements and effective dates in the dispute resolution process. The amendments remove certain procedures for DWC staff that are not required by statute and do not contribute to the purpose of filing agreements. The amendments also remove §147.4(e), which refers to possible penalties imposed if a breach of an agreement occurs, because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties. The amendments will also rename §147.4 to better reflect its purpose.

Section 147.5 concerns settlements in the dispute resolution process, including settlement requirements, effective dates, and procedures for informal settlement conferences. The amendments remove subsections 147.5(b), (c), (d), (e), and (g). Those provisions are more appropriate for internal procedures than a rule. Removing them will update and streamline the settlement process. Subsection 147.5(h) will be removed because it exists in Labor Code §408.005(f). Section 147.9(c) regarding settlements will move to new §147.5(c). The amendments will also rename §147.5 to better reflect its purpose.

Section 147.6 provides that DWC may reject a settlement by an unrepresented employee pending an informal conference. DWC is repealing §147.6 because it is obsolete. Settlements under old law are now covered under Chapter 56 of this title (relating to Structured Compromised Settlement Agreements).

Section 147.7 concerns the effect on previously entered decisions and orders for agreements and settlements in the dispute resolution process. The amendments will rename §147.7 to better reflect its purpose.

Section 147.8 provides the circumstances under which a party can withdraw from a settlement. Section 147.8 will be removed because it repeats Labor Code §408.005(h).

Section 147.9 concerns the requirements for agreements and settlements in the dispute resolution process. Repealing §147.9 will remove subsections (a) and (b) because they repeat the statute. Section 147.9(c) regarding settlements will be moved to §147.5(c) to better organize the rule.

Section 147.10 concerns the commutation of impairment income benefits. The amendments to §147.10 will remove subsection (a) because it exists in Labor Code §408.128. Subsection (c) will be removed because the DWC form already provides a warning to the employee that commutation terminates the employee's entitlement to additional income benefits, and it exists in Labor Code §408.128. Subsection (d) will be removed because it is unnecessary. Subsection (d) states that the employee may contact DWC to get or verify the information required to be included in a request to commute impairment benefits. Employees may contact DWC to get or verify this information without a rule stating so. Therefore, it is unnecessary. The amendments also rename the section to better reflect its purpose.

Section 147.11 concerns notifications to DWC of proposed judgments and settlements within the dispute resolution process. The amendments to §147.11 update the language in subsection (b) and remove subsections (a) and (c) because they exist in Labor Code §410.258. The amendments also remove subsection (d) regarding penalties because Labor Code Chapter 415 and 28 TAC Chapter 180 address these penalties.

In addition, the proposed amendments to Chapter 147 include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Deputy Commissioner for Hearings Allen Craddock has determined that during each year of the first five years the proposed amendments and repeals are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments and repeals do not add to or decrease state revenues or expenditures, and because local gov-

ernments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Craddock does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

**PUBLIC BENEFIT AND COST NOTE.** For each year of the first five years the proposed amendments and repeals are in effect, Deputy Commissioner Craddock expects that enforcing and administering the proposed amendments and repeals will have the public benefits of ensuring that DWC's rules conform to Labor Code §§408.005 and 410.258 and have a clearer set of rules about the dispute resolution process that is current, accurate, and readable, which promotes transparent and efficient regulation.

Deputy Commissioner Craddock expects that the proposed amendments and repeals will not increase the cost to comply with Labor Code §§408.005 and 410.258 because they do not impose requirements beyond those in the statute or that exist in current rules. As a result, any cost associated with the rules does not result from the enforcement or administration of the proposed amendments and repeals.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** DWC has determined that the proposed amendments and repeals will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities because the proposed amendments and repeals remove unnecessary language and better organize the rule. They do not change the people the statute affects or impose additional costs. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

**EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045.** DWC has determined that this proposal does not impose a possible cost on regulated persons. Also, no additional rule amendments are required under Government Code §2001.0045 because the proposed amendments and repeals remove unnecessary language and requirements for parties involved in the dispute resolution process.

**GOVERNMENT GROWTH IMPACT STATEMENT.** DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

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

DWC made these determinations because the proposed amendments and repeals will remove unnecessary language and better organize the rule, so the dispute resolution process is easier to

navigate and understand. DWC made these determinations because the proposed amendments enhance efficiency and clarity; conform the language to current agency structure, practice, and related rules; and make editorial changes for plain language and agency style. They do not change the people the rule affects or impose additional costs.

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

**REQUEST FOR PUBLIC COMMENT.** DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on May 6, 2024. Send your comments to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to [RuleComments@tdi.texas.gov](mailto:RuleComments@tdi.texas.gov); or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

#### **28 TAC §§147.1 - 147.3, 147.6, 147.8, 147.9**

**STATUTORY AUTHORITY.** DWC proposes repealing §§147.1 - 147.3, 147.6, 147.8, and 147.9 under Labor Code §§401.011, 408.005, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §401.011 provides definitions used in workers' compensation.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Sections 147.1 - 147.3, 147.6, 147.8, and 147.9 implement Labor Code §§401.011, 408.005, 410.029, 410.030, and 410.258. Section 401.011 was enacted by Senate Bill 1, 71st Legislature, 2nd Called Session (1989). Section 408.005 was enacted by House Bill (HB) 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature, Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

§147.1. *Definitions.*

§147.2. *Form.*

§147.3. *Execution.*

§147.6. *Settlement Conference.*

§147.8. *Withdrawal from Settlement.*

§147.9. *Requirements for Agreements and Settlements.*

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401248

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 804-4703



## 28 TAC §§147.1, 147.4, 147.5, 147.7, 147.10, 147.11

STATUTORY AUTHORITY. DWC proposes adding new §147.1 and amending §§147.4, 147.5, 147.7, 147.10, and 147.11 under Labor Code §§408.005, 408.128, 410.029, 410.030, 410.258, 402.00111, 402.00116, and 402.061.

Labor Code §408.005 concerns the timing, approval, and withdrawal of a settlement in the dispute resolution process.

Labor Code §408.128 provides that an employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage. An employee who elects to

commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Labor Code §410.029 provides that a dispute may be resolved either in whole or in part at a benefit review conference. If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer must reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party must sign the agreement or settlement. Section 410.029 also provides that a settlement takes effect on the date it is approved by DWC in accordance with Labor Code §408.005.

Labor Code §410.030 provides that an agreement signed in accordance with Labor Code §410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless DWC or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement. The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier.

Labor Code §410.258 provides that a party must file any proposed judgment or settlement, including a proposed default judgment or proposed agreed judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. New §147.1 and amended §§147.4, 147.5, 147.7, 147.10, and 147.11 implement Labor Code §§408.005, 408.128, 410.029, 410.030, and 410.258. Section 408.005 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 408.128 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.029 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 410.030 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 410.258 was enacted by HB 3137, 75th Legislature, Regular Session (1997) and amended by HB 7, 79th Legislature, Regular Session (2005) and HB 2061, 85th Legislature, Regular Session (2017).

§147.1. *Form and Execution.*

(a) A settlement or a written agreement must be on a form prescribed by the division.

(b) In addition to the parties, the employee's representative, if any, must sign the written agreement or settlement.

(c) Unless the division finds that an extraordinary circumstance applies, an employee's representative must not sign a written agreement or settlement on behalf of the employee.

(d) The insurance carrier's representative must sign a written agreement or settlement as the agent of the insurance carrier, and the insurance carrier will be bound by the written agreement or settlement.

*§147.4. [Filing] Agreements [with the Commission]; [Filing and Effective Dates.]*

(a) An agreement [reached before a benefit proceeding has been scheduled] may be reduced to writing and sent to the division [commission field office handling the claim]. [If the parties include a request for commission approval, the] The agreement is effective and binding on the date the division approves it [approved by the commission].

[(b) A written agreement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer. The presiding officer will review the agreement to ascertain that it complies with the Texas Workers' Compensation Act and these rules; if so, sign it, and furnish copies to the parties. A written agreement is effective and binding on the date signed by the presiding officer.]

(b) [(e)] An oral agreement reached during a benefit contested case hearing and preserved in the record is effective and binding on the date made.

(c) [(d)] A signed written agreement, or one made orally, as provided by subsection (b) [(e)] of this section, is binding on:

(1) an insurance [a] carrier and a claimant represented by an attorney through the final conclusion of all matters relating to the claim, whether before the division [commission] or in court, unless set aside by the division [commission] or court on a finding of fraud, newly discovered evidence, or other good and sufficient cause; and

(2) a claimant not represented by an attorney through the final conclusion of all matters relating to the claim while the claim is pending before the division [commission], unless set aside by the division [commission] for good cause.

[(e) Breach of an agreement approved by the commission, done knowingly, is a Class C administrative violation, with a penalty not to exceed \$1,000.]

*§147.5. Settlements: Requirements, Effective Dates, and Informal Settlement Conferences [Filing Settlements with the Commission; Effective Dates].*

(a) A settlement [reached before a benefit proceeding has been scheduled] must [shall] be sent to the division [commission field office handling the claim].

[(b) A settlement reached after a benefit proceeding has been scheduled, whether before, during, or after the proceeding has been held, shall be sent or presented to the presiding officer.]

[(c) The commission employee receiving a settlement will sign it, mark it with the date received, and forward it to the director of the division of hearings.]

[(d) A properly completed and executed settlement shall be deemed received by the director of the division of hearings on the second day after it is filed with any commission field office, as provided by subsection (a) of this section, or any presiding officer, as provided by subsection (b) of this section.]

[(e) The director of the division of hearings shall approve a settlement determined to be in compliance with the requirements established in the Texas Workers' Compensation Act, §4.33(e).]

(b) [(f)] The division [director] may[.] approve or reject it before the 16th day after the date the settlement is submitted to the division. [within 15 days of the date the settlement was received:

[(1) approve it by signing it, and marking it with the date signed; or]

[(2) reject it by marking it "Rejected," signing it, and marking it with the date signed.]

[(g) The director shall promptly furnish copies of the approved or rejected settlement to all parties by first class mail or personal delivery. A rejected settlement shall be accompanied by a written statement of the reasons for rejection.]

[(h) Unless previously expressly rejected by the director of the division of hearings, a settlement is effective and binding on the earlier of:]

[(1) at the close of business day of the date approved by the director of the division of hearings; or]

[(2) the 16th day after the date filed with the director of the division of hearings.]

(c) A settlement must:

(1) establish that the insurance carrier is liable for the claim;

(2) establish that the claim is compensable;

(3) establish that the employee is entitled to benefits;

(4) incorporate by reference all prior oral and written agreements between the parties; and

(5) state that a final resolution has been reached on all issues in the claim, and that the parties waive their rights to subsequent division proceedings, other than those necessary to resolve medical benefit disputes or to enforce compliance with the terms of the settlement.

*§147.7. Agreements and Settlements: Effect on Previously Entered Decisions and Orders.*

(a) A written agreement on one or more disputed issues addressed in a presiding officer's decision or order, including an interlocutory order, sets aside the decision or order, as it relates to the agreement, on the date the agreement is approved by the presiding officer.

(b) A settlement filed before a presiding officer's decision becomes final sets aside a presiding officer's decision or order, except for an interlocutory order, on the date received by the division [director of the division of hearings]. If the division [director of the division of hearings] rejects the settlement, the decision or order will [shall] be immediately reentered.

(c) A settlement sets aside an interlocutory order on the date the settlement becomes effective.

*§147.10. Notification to the Division of Proposed Judgments and Settlements [Commutation of Impairment Income Benefits].*

[(a) An employee may elect to commute impairment income benefits when the employee has returned to work for at least three months, earning at least 80% of the employee's average weekly wage.]

(a) [(b)] A request to commute impairment income benefits must:

(1) be in writing on a form prescribed by the division [commission-prescribed form];

(2) state the date the employee reached maximum medical improvement, [;] the impairment rating, [;] and the employee's weekly impairment income benefit;

(3) be sent to the insurance carrier; and

(4) be filed with the division [commission field office managing the claim].

[(e) The ~~commission-prescribed form~~ shall include a warning to the employee that commutation terminates the employee's entitlement to additional income benefits for the injury.]

[(d) The employee may contact the commission field office managing the claim to obtain or verify the information required to be included in the request.]

(b) [(e)] The insurance carrier must [shall] send a notice of approval or denial of the request to the employee no later than 14 days after receiving [receipt of] the request. A notice of approval must [shall] include payment of the commuted impairment income benefits. A notice of denial must [shall] include the insurance carrier's reasons for denial. A copy of the notice must [shall] be filed with the division [commission field office managing the claim].

(c) [(f)] If the insurance carrier denies the request, the employee may request the division [commission] to schedule a benefit review conference to resolve the issue, as provided by §141.1 of this title (relating to Form and Execution [Requesting and Setting a Benefit Review Conference]).

*§147.11. Notification to Division [of Commission] of Proposed Judgments and Settlements.*

[(a) The party who requested judicial review under Chapter 410, Subchapter F or G shall file a copy of any proposed judgment or settlement with the executive director of the Commission by filing it with the General Counsel of the Commission not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. A proposed judgment or settlement must be sent by certified mail return receipt requested.]

[(b) The insurance carrier or its representative must [shall] file [with the General Counsel of the Commission] a copy of a final judgment or settlement with the division ~~no~~ [not] later than the 10th day after a court approves the agreement or settlement.

[(c) For suits seeking judicial review filed under Chapter 410, Subchapter F (regarding Judicial Review General Provisions) or Subchapter G (regarding Judicial Review of Issues Regarding Compensability or Income or Death Benefits), on or after September 1, 1997, a judgment or settlement which is not filed with the commission in compliance with subsections (a) and (b) of this section is void.]

[(d) A party who violates this section may be subject to an administrative penalty, including a penalty of up to \$1,000 pursuant to the Texas Labor Code, §415.0035 or up to \$10,000 pursuant to the Texas Labor Code, §415.021 for repeated violations.]

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401249

Kara Mace

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 804-4703



## TITLE 34. PUBLIC FINANCE

# PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

### SUBCHAPTER S. NEXT GENERATION 9-1-1 SERVICE FUND

#### 34 TAC §5.480

The Comptroller of Public Accounts proposes amendments to §5.480, concerning next generation 9-1-1 service fund.

The comptroller proposes the amendments to comply with changes made to Health and Safety Code, §771.0713, relating to the Next Generation 9-1-1 Service Fund, by House Bill 3290, 88th Legislature, R.S., 2023. The legislation enacted within the last four years that provides the statutory authority for the amendments is House Bill 2911, 87th Legislature, R.S., 2021, and House Bill 3290, 88th Legislature, R.S., 2023.

The amendments to subsection (a) add the definition of "Coronavirus funds" to shorten the references to these funds, making the rule easier to read.

The amendments to subsection (b) update this subsection to comply with Health and Safety Code, §771.0713(b), as amended by House Bill 3290.

The amendments to subsection (c) update this subsection to comply with Health and Safety Code, §771.0713(f), as amended by House Bill 3290; provide that paragraph (2) of this subsection, concerning the date by which all money deposited to the credit of the fund must be distributed, and clarify that money deposited to the credit of the fund may be distributed only as provided in Health and Safety Code, §771.0713(c), (c-1), (c-2), and (c-3).

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rule would benefit the public by conforming the rule to current statute. There would be no anticipated significant economic cost to the public. The proposed amended rule would have no fiscal impact on small businesses or rural communities.

Comments on the proposal may be submitted to Rob Coleman, Director, Fiscal Management Division, at rob.coleman@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under House Bill 2911, §5, 87th Legislature, R.S., 2021, which requires the comptroller to adopt rules necessary to establish and administer the next generation 9-1-1 service fund established under Health and Safety Code, §771.0713.



The amendments implement Health and Safety Code, §771.0713.

§5.480. *Next Generation 9-1-1 Service Fund.*

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

(1) Commission--The Commission on State Emergency Communications.

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

(3) Coronavirus funds--Coronavirus State and Local Fiscal Recovery Funds under American Rescue Plan Act of 2021 (Pub. L. No. 117-2), §9901.

(4) [(3)] Emergency communication district--Has the meaning assigned by Health and Safety Code, §771.001(3).

(5) [(4)] Fund--The Next Generation 9-1-1 Service Fund established under Health and Safety Code, §771.0713.

(6) [(5)] Next generation 9-1-1 service--Has the meaning assigned by 47 U.S.C. §942.

(b) Transfer of money to the fund.

(1) Notwithstanding any other law and except [E]xcept as provided by federal law, the comptroller shall transfer to the credit of the fund as authorized by the legislature any amount available from federal money provided to this state from the Coronavirus funds [State and Local Fiscal Recovery Funds under §9901 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2)] or from any other state or federal governmental source for purposes of Health and Safety Code, Chapter 771, including money appropriated or otherwise credited to the fund.

(2) The comptroller shall transfer the money as soon as practicable following:

(A) the receipt by this state of a sufficient amount of federal money for the transfer; or[-]

(B) the effective date of the most recent legislative appropriation for purposes of Health and Safety Code, Chapter 771.

(c) Administration, distribution, and use.

(1) The commission shall administer the fund.

(2) The commission shall distribute all money deposited to the credit of the fund from the Coronavirus funds [as appropriated by the legislature], including any interest earned on money deposited to the credit of the fund from the Coronavirus funds, by August 31, 2024 [December 31, 2022]. This paragraph does not apply to the distribution of money deposited to the credit of the fund from any other state or federal governmental source for purposes of Health and Safety Code, Chapter 771, including money appropriated or otherwise credited to the fund.

(3) Money deposited to the credit of the fund:

(A) may be used only for the purpose of supporting the deployment and reliable operation of next generation 9-1-1 service, including the costs of equipment, operations, and administration;

(B) may be distributed to only the commission and emergency communication districts as provided in Health and Safety Code, §771.0713(c), (c-1), (c-2), and (c-3); and

(C) must be used in a manner that complies with state and federal law, including the requirements of Health and Safety Code, §771.0713.

(4) All money distributed under paragraph (2) of this subsection must be spent by December 31, 2026 [2024].

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

Filed with the Office of the Secretary of State on March 20, 2024.

TRD-202401239

Victoria North

General Counsel for Fiscal and Agency Affairs

Comptroller of Public Accounts

Earliest possible date of adoption: May 5, 2024

For further information, please call: (512) 475-2220



## CHAPTER 16. COMPTROLLER GRANT PROGRAMS

### SUBCHAPTER A. BROADBAND POLE REPLACEMENT PROGRAM

#### 34 TAC §§16.1, 16.3, 16.4, 16.8 - 16.10, 16.12

The Comptroller of Public Accounts proposes amendments to §16.1 concerning definitions, §16.3 concerning notice and applications, §16.4 concerning eligible applicants, §16.8 concerning reimbursement awards, §16.9 concerning payment, §16.10 concerning requirements, and §16.12 concerning noncompliance.

The amendments comply with House Bill 1505, §1, 87th Legislature, R.S., 2021, and House Bill 9, §2, 88th Legislature, R.S., 2023, which establish the broadband pole replacement fund and the Texas broadband pole replacement program and require the comptroller to prescribe rules for the program.

The amendments to §16.1 add new definitions. The amendments also include conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.3 clarify the methods by which the office is required to provide notice of the availability of grant funds for award. The amendments also include conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.4 establish additional eligibility requirements related to eligible costs and grant eligibility requirements.

The amendments to §16.8 add a requirement for grant recipients to negotiate and sign a grant agreement prior to issuance of a reimbursement award.

The amendments to §16.9 clarify that date from which the time period within which a reimbursement award must be paid to a grantee starts after a notice of a reimbursement award is issued.

The amendments to §16.10 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

The amendments to §16.12 make conforming changes required by House Bill 4595, §24.002, 88th Legislature, R.S., 2023, by updating statutory section references.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed

amended rules are in effect, the rules: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rules would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed amended rules would benefit the public by conforming the rule to current statute. The proposed amended rules would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Greg Conte, Director, Broadband Development Office, at [broadband@cpa.texas.gov](mailto:broadband@cpa.texas.gov) or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Government Code, §403.553(c), which requires the comptroller to prescribe rules for the Texas broadband pole replacement program.

The amendments implement Government Code, Chapter 403, Subchapter S, concerning infrastructure and broadband funding.

#### §16.1. Definitions.

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

(1) Applicant--A person that has submitted an application for a reimbursement award under this subchapter.

(2) Broadband serviceable location--A business or residential location in this state at which qualifying broadband service is, or can be, installed, including a community anchor institution.

(3) ~~[(2)]~~ CCPF--The Coronavirus Capital Projects Fund (42 U.S.C. §804), established by §604 of the Social Security Act, as added by §9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2.

(4) ~~[(3)]~~ Eligible broadband facility--Has the meaning assigned by Government Code, §403.553(a)(1) [~~§403.503(a)(1)~~].

(5) Eligible county--A rural county in which, according to the latest broadband availability data made available by the Federal Communications Commission, more than 20% of the broadband serviceable locations in the area either:

(A) lack access to fixed, terrestrial broadband service capable of providing a download speed of at least 25 megabits per second (Mbps) and an upload speed of at least 3 Mbps; or

(B) are subject to a federal or state grant to deploy broadband service, the conditions of which limit the availability of a grant to unserved areas.

(6) ~~[(4)]~~ Eligible pole replacement cost--Has the meaning assigned by Government Code, §403.553(a)(2) [~~§403.503(a)(2)~~].

(7) ~~[(5)]~~ Grant recipient or Grantee--An applicant that receives a reimbursement award under this subchapter.

(8) ~~[(6)]~~ Grant funds--Monies in the pole replacement fund.

(9) ~~[(7)]~~ NOFA--Notice of Funding Availability.

(10) ~~[(8)]~~ Office--The Broadband Development Office established within the comptroller's office under Government Code, Chapter 490I.

(11) ~~[(9)]~~ Pole--Has the meaning assigned by Government Code, §403.553(a)(5) [~~§403.503(a)(5)~~].

(12) ~~[(10)]~~ Pole owner--Has the meaning assigned by Government Code, §403.553(a)(6) [~~§403.503(a)(6)~~].

(13) ~~[(11)]~~ Pole replacement fund--Has the meaning assigned by Government Code, §403.551(1) [~~§403.501(1)~~].

(14) ~~[(12)]~~ Pole replacement program--Has the meaning assigned by Government Code, §403.551(2) [~~§403.501(2)~~].

(15) ~~[(13)]~~ Qualifying broadband service--Has the meaning assigned by Government Code, §403.553(a)(3) [~~§403.503(a)(3)~~].

(16) Rural county--A county with a population of less than 100,000 that is not adjacent to a county with a population of more than 350,000.

(17) ~~[(14)]~~ Unserved area--Has the meaning assigned by Government Code, §403.553(a)(4) [~~§403.503(a)(4)~~].

#### §16.3. Notice and Applications.

(a) The office shall use one or more methods[;] as necessary to provide notice of the availability of funds for award under this subchapter including publication[; publish a NOFA] in the *Texas Register* or on the *Electronic State Business Daily*[; and on the comptroller's website]. The comptroller may make available a copy of the NOFA on the comptroller's website.

(b) The NOFA published under subsection (a) of this section [notice] may include:

(1) the total amount of grant funds available for reimbursement awards;

(2) the minimum and maximum amount of grant funds available for each application;

(3) limitations on the geographic distribution of grant funds;

(4) eligibility requirements;

(5) application requirements;

(6) reimbursement award and evaluation criteria;

(7) the date by which applications must be submitted to the office;

(8) the anticipated date of reimbursement awards; and

(9) any other information the office determines is necessary for award [awarding the reimbursement as determined by the office].

(c) All applications for a reimbursement award submitted under this subchapter must comply with the requirements of Government Code, §403.553(g) [~~§403.503(g)~~], and any requirements contained in a NOFA published by the office.

(d) An application for funding under this subchapter shall be submitted on the forms and in the manner prescribed by the office. The office may require that applications be submitted electronically. [Applicants must apply for a reimbursement award using the procedures, forms, and certifications prescribed by the office.]

(e) The office may require applicants to submit preliminary information to the office prior to submitting a completed application for

a reimbursement award to enable the office to determine each applicant's eligibility to apply for a reimbursement award and to compile aggregate information that applicants may use in determining whether to complete the application process.

(f) During the review of an application, an applicant may be instructed to submit to the office additional information necessary to complete the review. Such requests for information do not serve as notice that the office intends to fund an application.

§16.4. Program Eligibility Requirements; Eligible Applicants; Costs.

(a) The office may award grant funds for actual and reasonable costs paid or incurred by an eligible applicant to remove and replace a pole in unserved areas that are located within an eligible county.

(b) An applicant is eligible to apply to the office for a reimbursement award under this subchapter if the applicant:

(1) is a pole owner or a provider of qualifying broadband service; ~~and~~

(2) pays or incurs eligible pole replacement costs of removing and replacing an existing pole in an unserved area for the purpose of accommodating the attachment of an eligible broadband facility; ~~and~~[-]

(3) otherwise meets eligibility criteria prescribed by the office in a NOFA published under §16.3 of this subchapter.

(c) Eligible costs include the amount of any expenditures to remove and dispose of the existing pole, purchase and install a replacement pole, and transfer any existing facilities to the new pole.

(d) Costs that an applicant incurs that have been or will be reimbursed to the applicant by another party ultimately responsible for the costs are not eligible for reimbursement under this subchapter.

(e) An award under this subchapter may not exceed:

(1) The lesser of 50% of the eligible pole replacement costs paid or incurred by the applicant or \$5,000, whichever is less, for the pole replaced; plus

(2) the documented and reasonable administrative expenses incurred by the applicant in preparing and submitting the reimbursement application.

(f) The amount reimbursed under subsection (e)(2) of this section may not exceed 5.0% of the eligible pole replacement costs in the application.

§16.8. Reimbursement Awards.

(a) The office shall make a determination and ~~must~~ provide [a] notice of a reimbursement award or a notice of denial to an applicant[, in writing,] not later than 60 calendar days after the date that the office receives a completed application from the applicant. An application will not be considered complete for purposes of this section unless an applicant has provided all the information necessary for the office to review the application, including any additional information requested by the office to complete the review.

(b) All grant funding decisions made by the office are final and are not subject to appeal.

(c) The approval of a reimbursement award shall not obligate the office to make any additional, supplemental, or other reimbursement award.

(d) The office shall provide notice of award to a successful applicant and, as applicable, the pole owner and the retail broadband service provider attaching the eligible broadband facility. A grant recipient shall have 30 calendar days from the notice of award to negotiate

and sign the grant agreement. The comptroller may extend the deadline to fully execute the grant agreement upon a showing of good cause by a grant recipient. If the grant agreement is not signed by the grant recipient and received by the office by the later of the 30th day after the award of the grant agreement or the extended deadline date, the office may rescind the award.

(e) The office shall issue the award after the grant recipient signs the grant agreement.

§16.9. Payment.

A reimbursement award must be paid to a grant recipient [grantee] not later than 30 calendar days after the date the office issues an [a notice of a reimbursement] award under §16.8(e) [~~§16.8(a)~~] of this subchapter.

§16.10. Requirements.

(a) The administration and use of a reimbursement award are subject to:

(1) the terms and conditions of the reimbursement award;

(2) the requirements of Government Code, Chapter 403, Subchapter ~~S~~ [R]; and

(3) any other state or federal law, rule, regulation, or guidance applicable to the type of funding used to make the reimbursement award.

(b) Grant funds may be used only for the purpose of supporting the pole replacement program, including the costs of program administration and operation.

(c) A grantee is the entity legally and financially responsible for compliance with state and federal laws, rules, regulations, and guidance applicable to the reimbursement award.

(d) Grant funds shall not be used for costs that will be reimbursed by any other federal or state funding source. The office may require an applicant/grantee to demonstrate through accounting records that funds received from another funding source are not used for costs that will be reimbursed by the pole replacement program.

§16.12. Noncompliance.

(a) If the office has reason to believe that a grantee has violated any term or condition of a reimbursement award or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, the office shall provide written notice of the allegations to the grantee and provide the grantee with an opportunity to respond to the allegations.

(b) If the office finds on substantial evidence that a grantee has materially violated the requirements of Government Code, ~~§403.553~~ [~~§403.503~~], with respect to reimbursements or portions of reimbursements, the office may direct the grantee to refund the reimbursement or a portion of the reimbursement with interest at the applicable federal funds rate as specified by Business and Commerce Code, §4A.506(b).

(c) If the office finds that a grantee has failed to comply with any term or condition of a reimbursement award, or any applicable laws, rules, regulations, or guidance relating to the reimbursement award, other than the requirements described in subsection (b) of this section, the office may:

(1) direct the grantee to refund the reimbursement award or a portion of the reimbursement award;

(2) withhold reimbursement award amounts to a grantee under this subchapter pending correction of the deficiency;

(3) disallow all or part of the cost of the activity or action that is not in compliance;

- (4) terminate the reimbursement award in whole or in part;
- (5) prohibit the grantee from being eligible for future reimbursement awards under the pole replacement program; or
- (6) exercise any other legal remedies available at 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 March 25, 2024.

TRD-202401260  
Victoria North  
General Counsel for Fiscal and Agency Affairs  
Comptroller of Public Accounts  
Earliest possible date of adoption: May 5, 2024  
For further information, please call: (512) 475-2220



# 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 22. EXAMINING BOARDS

### PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

#### CHAPTER 361. ADMINISTRATION

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 22 TAC §361.1

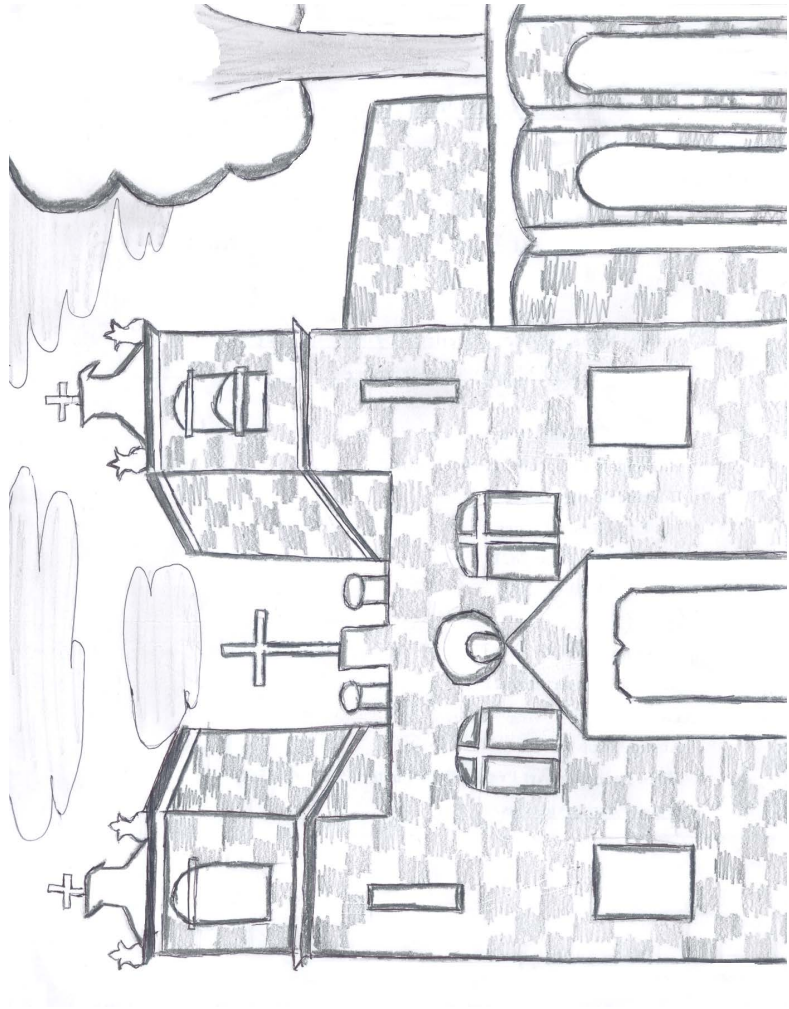
Proposed amended §361.1, published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 4982), is withdrawn. The

agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Published by the Office of the Secretary of State on March 21, 2024.

TRD-202401250





# 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 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 7. GAS SERVICES

#### SUBCHAPTER D. CUSTOMER SERVICE AND PROTECTION

##### 16 TAC §7.480

The Railroad Commission of Texas (the "Commission") adopts new §7.480, relating to Energy Conservation Programs, with changes to the proposed text as published in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5796). The rule will be republished. The Commission adopts the new rule pursuant to House Bill 2263, 88th Legislative Session (2023) which added new Subchapter J, Natural Gas Energy Conservation Programs, in Chapter 104, Texas Utilities Code. House Bill 2263 relates to energy conservation programs that may be offered by a local distribution company (LDC) to its residential and commercial customers and requires an LDC seeking to recover the costs of the program to apply to the Commission. New §7.480 describes the process through which an LDC may apply for Commission approval. In the October 6th issue of the *Texas Register*, the Commission also proposed amendments to §7.460, relating to Suspension of Gas Utility Service Disconnection During an Extreme Weather Emergency. The Commission adopted amendments to §7.460 effective December 5, 2023 (48 TexReg 7044).

Regarding proposed new §7.480, the Commission received eleven comments, four from associations (Atmos Cities Steering Committee joined by the City of Austin (Atmos Cities), Commission Shift, the Lone Star Chapter of the Sierra Club, and the South-Central Partnership for Energy Efficiency as a Resource (SPEER)), three from companies (Atmos Energy Corporation (Atmos Energy), CenterPoint Energy Resources Corp. (CenterPoint), and Texas Gas Service Company (Texas Gas)), one from the City of Houston, one from the Office of Public Utility Counsel (OPUC), one from Public Citizen, and one from an individual.

The Commission appreciates these comments.

Atmos Cities, CenterPoint, OPUC, and SPEER expressed general support for §7.480. Commission Shift and an individual expressed general opposition to §7.480.

Atmos Cities, the City of Houston, Commission Shift, Public Citizen, Sierra Club, SPEER, and one individual requested that a cost-effectiveness standard be incorporated into §7.480. The City of Houston commented that the proposed rule does not ensure the measures included in an LDC's energy conservation program (ECP) are effectively reducing gas consumption or are

cost-effective in reducing consumption. The ECP should require program evaluation by a third party to verify and report on performance of the program and measures and ensure the cost-effectiveness and efficacy of the program. Commission Shift supported establishing cost-effective criteria that ensures good management of the program and not the creation of another form of income or wasteful spending on the part of the LDC. Atmos Cities, the City of Houston, one individual, Sierra Club, and Public Citizen commented that cost-effectiveness should be subject to review by an independent auditor.

The Commission disagrees that a cost-effectiveness standard should be incorporated at this time. Texas Utilities Code §104.403 states that an LDC may recover costs that are prudently incurred in the manner required by Subchapter J, Natural Gas Energy Conservation Programs. Subchapter J does not require a finding of cost-effectiveness. However, in lieu of incorporating a cost-effectiveness standard, the Commission adopts a change to limit the ECP rate that can be charged to residential and commercial customers. The Commission agrees with a comment from Sierra Club that a maximum ECP rate should be established and adopts subsection (g) with a change such that an ECP rate may not exceed a volumetric charge of \$0.20/Mcf for residential customers and \$0.20/Mcf for commercial customers. The rate increase due to an ECP charge would be no more than approximately 1.2% of the 2023 average cost of residential gas service in Texas according to the U.S. Energy Information Administration. The Commission notes that this ECP rate cap will also limit the impact of the ECP rate on all customer bills including low-income customers.

Further, in accordance with subsection (f), the LDC may utilize third party verification of its ECP portfolio performance, including the cost-effectiveness and efficacy of the program. If an LDC chooses to evaluate cost-effectiveness itself or through a third-party independent auditor, the LDC is required to report the findings in its annual report as required by subsection (j). The Commission adopts subsection (j) with a change to require that any evaluation of cost-effectiveness be included in the LDC's annual report. The Commission intends to reevaluate the addition of a cost-effectiveness finding after successful implementation of the new rule.

SPEER recommended the Commission require periodic stakeholder meetings where stakeholders can meet and discuss any issues or improvements to the ongoing ECP's in the state.

The Commission declines to make any changes to the rule in response to this comment but will consider SPEER's suggestion as it implements new §7.480.

Sierra Club expressed concern that ECPs could be designed more to sell gas appliances versus encouraging customers to save gas through shifting use at peaks, using more efficient appliances, or other efficiency measures like insulation. Similarly,

Public Citizen recommended a more stringent review of ECPs that incentivize the purchase of appliances because the incentives are especially likely to be used as a means for growing market share rather than conserving energy.

The Commission declines to make any changes in response to these comments. Utilities Code §104.403 allows LDCs to offer programs that promote energy conservation or energy efficiency. Gas appliances may help consumers achieve these goals.

Regarding subsection (b), Definitions, CenterPoint suggested several changes to proposed definitions. Atmos Energy commented that it supports CenterPoint's comments. First, CenterPoint suggested that administrative costs be defined as all prudently incurred costs of creating, managing, and administering an ECP portfolio. The Commission agrees that "prudently incurred" should be added to the definition and adopts subsection (b)(1) with that change.

CenterPoint recommended changes to the definition of energy conservation program rate in subsection (b)(5). CenterPoint recommended the definition be changed to "ECP rate," and that the monthly customer charge be designed to recover an LDC's administrative and portfolio costs.

The Commission agrees with CenterPoint's recommended changes. The Commission agrees that the charge is designed to recover an LDC's authorized administrative and portfolio costs and adopts the definition with that change. Further, the Commission clarifies that the monthly charge is a volumetric charge, rather than a monthly customer charge based on comments from the City of Houston and the Sierra Club discussed below.

Next, CenterPoint recommended adding a definition of "lost marginal revenues." The Commission disagrees because the Commission declines to allow recovery of lost marginal revenues, as explained in the discussion of subsection (c) below.

CenterPoint provided a revised definition of portfolio costs, which defined these costs as, "All prudently incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective customers, including but not limited to research and development costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency." The Commission agrees with this revised definition and adopts the changes in subsection (b)(8).

CenterPoint recommended defining portfolio term. The Commission agrees that subsection (b) should include a definition of portfolio term, but does not agree with all of CenterPoint's proposed definition. Instead, the Commission adopts subsection (b) with new paragraph (9), which defines portfolio term as the term during which an approved ECP portfolio will be in effect.

CenterPoint also recommended revising the definition of program year to ensure the program year corresponds to a calendar year. The Commission disagrees because the program year for an approved ECP is dependent on the date of Commission approval. However, the Commission agrees the program year and portfolio term concepts may need clarification and addresses those issues in the discussion on subsection (d) below. The Commission also adopts the definition of "program year" with a change to clarify that the program year begins the first day of the month following the Commission's approval of the portfolio.

CenterPoint's last recommendation in subsection (b) was to add a definition of research and development costs. The Commission agrees and adopts most of CenterPoint's recommended language in subsection (b)(11).

Regarding subsection (c), CenterPoint requested revisions to allow an ECP rate that includes an LDC's lost marginal revenue. The City of Houston and Sierra Club requested that a formula or detailed instructions be included for quantifying lost marginal revenue.

The Commission recognizes that Texas Utilities Code §104.403 allows the Commission to approve an ECP that accounts for the reduction in the company's marginal revenues due to lower sales or demand resulting from the ECP. Though the statute allows for the recovery of lost marginal revenues, the language is not mandatory. The Commission declines to include lost marginal revenue because allowing the LDC to recover the amount of its lost marginal revenues through the ECP rate is harmful to the ratepayer. First, it increases the ECP rate for each residential and commercial customer irrespective of whether a particular customer has chosen to participate in an ECP program offered as part of an ECP portfolio. Utilities Code §104.403 already allows LDCs to pass through ECP costs to customers who have chosen not to participate in an ECP. Second, it reduces the incentive for a customer to participate in an ECP, and is counter-intuitive for such a customer to participate if the customer will ultimately reimburse the LDC for lost profits resulting from his or her participation in the very program promoted and marketed by the LDC to the customer.

Atmos Cities commented that subsection (c)(1) should be revised to use "implements" rather than "complies with." The Commission agrees and adopts this change in subsection (c)(1).

Subsection (c)(3) relates to costs prudently incurred. CenterPoint commented that the rule should be revised to remove the ability of the Commission to approve a program with modifications. The Commission disagrees because its review and oversight of an ECP requires that it retain discretion.

Regarding subsection (c)(3), Atmos Cities stated that the prudence review should be accomplished through a contested case. Sierra Club requested clear standards governing intervention for customers, cities, and non-profit organizations.

The Commission notes that review of ECP applications will be conducted administratively by Commission staff in accordance with this rule. Commission staff will consider written comments received in accordance with subsection (e)(1)(F) when presenting its determination to the Commission for approval. Customers and intervening parties will be provided an opportunity to scrutinize and contest the prudence of ECP costs and the ECP portfolio in the LDC's statement of intent rate proceeding. This is similar to how the Commission handles interim rate adjustment (IRA filings), for which an evidentiary, contested case is not held, but costs are scrutinized for prudence at the LDC's base rate proceeding. To clarify the intent of subsection (c)(3), the Commission adopts the paragraph with changes and makes a related change to subsection (e) to remove the reference to a protest. The Commission's changes in subsection (c)(3) include a requirement for the LDC to provide support for the reasonableness and prudence of ECP costs in its next statement of intent application.

Subsection (d) contains the requirements for an LDC's initial ECP application. Atmos Cities' comment requested that a de-



scription of any existing ECP programs offered by the LDC and payments made under each ECP be included in the application.

The Commission agrees that the initial application should include a description of any existing energy conservation programs offered by the LDC in the applicable service area prior to the effective date of §7.480. This change is adopted in subsection (d)(1)(A). The Commission declines to add a request for payments made under each ECP because it is unclear what Atmos Cities meant by "payments."

Atmos Cities also requests that the application include the projected annual demand reduction per customer class for each ECP, the proposed ECP rate calculation, and any other information that supports determination of the ECP rate.

The Commission declines to include a requirement for projected annual demand reduction because subsection (d)(1)(H) already requires the applicant to include projected annual consumption reduction per customer class for each ECP and the ECP portfolio. However, the Commission adopts changes in subsections (d)(1) and (d)(2) requiring the initial and subsequent application to include normalized historical annual volumes per customer class and projected volumes for the upcoming program year per customer class. This change corresponds to the change in subsection (b)(5), regarding the volumetric rate. The Commission agrees that the initial application should include the proposed ECP rate calculation and any other information that supports determination of the ECP rate. Those changes are adopted in subsection (d)(1)(N) and (Q). The Commission also adds these requirements in the subsequent application in subsection (d)(2).

CenterPoint recommended striking subsection (d)(1)(F) and (d)(1)(G), which require the application to include the proposed proportion of ECP portfolio costs to be funded by customers and the proposed proportion to be funded by shareholders. CenterPoint states that all reasonable and prudent ECP costs should be recoverable through the ECP rate from rate payers and only unreasonable or imprudent ECP costs should be borne by shareholders.

The Commission disagrees. ECP programs implemented prior to House Bill 2263 and this rule included information on the proportion of costs funded by customers versus shareholders and the Commission finds the information will continue to be useful. The Commission supports allowing an LDC the opportunity to share ECP program costs between its ratepayers and its shareholders.

CenterPoint made two other suggestions on subsection (d)(1). First, CenterPoint recommended "proposed annual" be revised to "proposed per-program year" to ensure consistency with the definition of program year. Second, it recommended the application include per-program year budget rather than requesting the proposed budget for portfolio costs and administrative costs separately.

The Commission agrees with CenterPoint's first suggestion but declines to combine portfolio and administrative costs into one application requirement. The Commission prefers to receive information on portfolio costs and administrative costs separately for each ECP and the ECP portfolio. The Commission clarifies its intent with changes to subsection (d)(1)(D) and (d)(2)(C) to replace "budget" with "portfolio costs." The Commission also replaces "annual" with "per program year" where appropriate.

Atmos Cities and CenterPoint commented on the frequency of subsequent ECP applications. Atmos Cities requested that the

Commission allow program modifications or new programs more frequently than once every three years. CenterPoint requested the ability to file subsequent applications no later than 90 days prior to the end of the portfolio term of the previously approved ECP portfolio.

The Commission declines to allow applications for new programs at an LDC's discretion due to the Commission's limited staff resources. Dictating application filing timelines will allow Commission staff to prioritize and prepare for ECP reviews among other responsibilities such as statement of intent and IRA filings. However, the Commission agrees that once every three years may be too limited. Therefore, the Commission adopts subsection (d)(2) to allow new program applications every other year. The subsequent application will be required 45 days following the end of the ECP portfolio's second program year.

Atmos Cities also asked that the Commission review the ECP every year to ensure rates match ECP costs.

The Commission agrees. The proposed and adopted versions of §7.480 contemplate an annual review of the ECP by Commission staff based on the annual report required under subsection (j). If staff's review determines the ECP rate as adjusted by the LDC's annual report is miscalculated or misapplied, staff will instruct the LDC to adjust its rate for the next program year.

CenterPoint offered additional comments on the subsequent application requirements in subsection (d)(2). CenterPoint suggested that its revisions to the initial application contents be incorporated into the subsequent application as well. The Commission agrees and adopts subsection (d)(2) with changes to ensure the application list is consistent with the list in subsection (d)(1).

CenterPoint also requested revisions to subsection (d)(2)(I) and (J) to require information on the consumption reduction and cost savings per customer class over the new portfolio term and the actual historical per-program year consumption reduction/cost savings for each ECP and the ECP portfolio over the previous portfolio term. This change will clarify the period to be covered, which is open-ended in the proposed version. The previous portfolio term would be the three program years of the previously approved ECP portfolio.

The Commission agrees and adopts subsection (d)(2)(I) as, "The projected per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term." The Commission adopts subsection (d)(2)(J) as, "The projected per-program year net cost savings per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year cost savings per customer class for each ECP and the ECP portfolio over the previous portfolio term." The Commission notes that due to changes discussed above, the portfolio term will be less than three program years.

Regarding subsection (e), notice requirements for ECP applications, the City of Houston and the Sierra Club requested additional notice of an ECP application to the intervenors in the LDC's most recent general rate proceeding.

The Commission disagrees. As mentioned below, a list of filed ECP portfolio applications will be in the Gas Utilities Information Bulletins, which are published twice a month on the Commission's website. This information is sufficient to notify interested

persons who do not receive direct notice required by subsection (e).

Texas Gas Service commented that subsection (e) should be revised to include a date by which public comments must be submitted.

The Commission disagrees. The Commission will conduct the ECP review process similar to an IRA proceeding. In IRA proceedings, the public is not provided a deadline by which to submit comments. The Commission prefers to mirror the IRA proceeding where possible to ensure consistency and predictability in its proceedings.

Public Citizen, one individual, and Sierra Club commented that the public should be invited to participate in the review of all ECP applications and renewals.

The Commission disagrees. The ECP application review, like an IRA, is administrative and will not result in a contested case. However, the notice provided to customers alerts customers to their opportunity to file written comments with Commission staff and intervene as a party to contest the ECP during the LDC's next statement of intent rate case proceeding. The Commission recognizes the language in subsection (e)(1)(F) may cause confusion regarding the nature of the ECP process, and so the Commission adopts subparagraph (F) with a change.

Public Citizen and Sierra Club asked that all affected customers be notified of an ECP by mail and by email if that is how the customer receives bills. These commenters also suggested that notice be posted on the Commission's website. Sierra Club further suggested the Commission require LDCs to post their public input and outreach processes on their websites. Commission Shift asked the Commission to consider requiring LDCs to provide public access to their ECPs.

The Commission disagrees that notice should be sent by mail and email. The Commission notes that a list of filed ECP portfolio applications will be in the Gas Utilities Information Bulletins, which are published twice a month on the Commission's website. The Commission agrees LDCs should make information about ECPs available on their websites. The Bulletins, information on LDC websites, and mail or email notice will ensure interested persons are notified of ECP applications. The Commission adopts subsections (e) and (j) with changes to require an LDC to post its ECP portfolio applications and annual reports on its website. The LDC will be required to provide the specific webpage on which the filing is located.

Atmos Cities alerted the Commission to a typographical error in subsection (e)(1)(F). The Commission appreciates this comment and corrects "LDC Company" to "LDC."

Subsection (g) describes the cost recovery mechanism for an ECP. Atmos Energy requested that the Commission remove the requirement limiting administrative costs to 15% of the total portfolio costs. Atmos Energy notes their ECP has been successful in cost-effectiveness, but administrative costs may exceed 15%. CenterPoint commented that the ECP should be exempt from the 15% cap in its first program year because administrative start-up costs for a new ECP will be greater than costs in subsequent years, while the amount of portfolio costs in the first year will naturally be less than in subsequent years.

The Commission declines to remove or alter the cap on administrative costs. The rule does not prohibit administrative costs in excess of 15% - it simply limits the recovery of administrative costs in excess of 15% from ratepayers. Additionally, an

existing ECP, previously approved in a rate case, has been in existence for over ten years and has successfully limited administrative costs to 15%.

Commission Shift commented that a 15% cap for administrative costs is meaningless without a cap on total costs.

The Commission disagrees. The cap discourages unreasonable or excessive spending on costs not directly related to the ECP. The Commission also notes that adopted §7.480 limits the ECP rate that may be charged to customers.

CenterPoint requested clarification that the ECP cost recovery mechanism applies to lost marginal revenue as well as incremental administrative and portfolio costs.

The Commission disagrees. The cost recovery mechanism applies to reasonable incremental administrative costs subject to the 15% cap and reasonable incremental portfolio costs. It does not apply to lost marginal revenue because recovery of lost marginal revenue is not authorized in §7.480.

CenterPoint also requested clarification regarding whether the cost recovery mechanism applies to both the initial ECP application and adjustments in subsequent years. The Commission confirms it does and adopts subsection (g) with a change to address this comment.

Texas Gas asked that the Commission clarify the time period for when approved ECP rates would be subject to refund. For example, whether ECP rates are subject to refund until reviewed in the LDC's next full rate case but not in a COSA, GRIP, or similar Interim Rate Case filing.

The Commission responds that ECP costs, including imprudent ECP costs or ECP costs recovered from customers without approval of the Commission will be subject to review and refund at the LDC's next statement of intent rate proceeding. The change adopted in subsection (c)(3) clarifies this issue.

The City of Houston, one individual, and the Sierra Club requested that the ECP rate be designed as a volumetric consumption rate and charged to customers on a volumetric or therm basis per month. They state that based on the formula in the proposal, the costs of the ECP are recovered on a monthly bill basis from customers within each class. However, natural gas conservation programs reduce consumption, or the volumes/therms sold to customers. Thus, the costs should be recovered on a volumetric or therm rate basis by the ECP rate.

The Commission agrees that the ECP rate should be designed as a volumetric consumption rate and adopts subsection (g) and (b)(5) with revisions to reflect that rate.

SPEER and the Sierra Club asked the Commission to consider a minimum percentage of 15% of ECP portfolio expenditures for a program year be focused on low-income customers included in the rule. According to the most recent census data, 14% of Texans are considered low-income. By setting aside a relatively proportional share of expenditures to go towards these communities specifically, we can begin to reduce the energy burden of those hardest hit by higher energy bills.

The Commission declines to adopt the recommended change because the Commission does not want to limit the overall impact of the program.

Subsection (h) relates to the Commission's procedure for reviewing ECP applications. CenterPoint recommended adding, "Neither the review of an ECP portfolio application filing nor the re-

view of a proposed ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022." CenterPoint noted this language is consistent with the governing statute.

The Commission agrees and adopts subsection (h) with a change to include the recommended language.

Atmos Cities and Texas Gas requested that the rule include a deadline for when Commission staff's administrative review of an ECP application must be completed. Atmos Cities requested 120 days and Texas Gas requested 60 days.

The Commission agrees and adopts subsection (h) with a change to require staff's review to be completed within 120 days of the date the application is filed with Gas Services.

Regarding subsection (i), CenterPoint asked that the Commission clarify that the ECP rate schedule filing requirement applies not only during initial and subsequent ECP applications but also when filing the ECP annual report and rate adjustment under subsection (j).

The Commission agrees and adopts changes in subsection (i) to clarify its intent.

Subsection (j) requires an LDC implementing an approved ECP portfolio to file an ECP annual report with the Commission. Atmos Cities requested the following items be included in the annual report in addition to the items proposed in subsection (j): the revenue collected through the ECP rate by customer class; the number of customers participating in each ECP; actual energy and demand savings achieved by customer class; and actual cost-effectiveness calculations.

The Commission notes that revenue collected is already required in subsection (j) but agrees a change is needed to clarify that the "per customer class" language applies to each annual report component in subsection (j)(1)(D). The Commission adopts subsection (j)(1)(D) with that change. The Commission also agrees to add the number of customers participating in each ECP and includes a requirement to provide normalized historical annual volumes and projected volumes per customer class as well. The Commission declines to require the actual energy and demand savings achieved by customer class because subsection (j) already requires the LDC to provide a description of each program's performance for the program year, actual program expenditures, and program results. As discussed above, the Commission also incorporates a requirement for a cost-effectiveness evaluation to be included in the report if a cost-effectiveness evaluation is conducted. The Commission declines to require cost-effectiveness calculations because the Commission did not incorporate a cost-effectiveness standard in §7.480.

Texas Gas requested that the Commission extend the time for filing the annual report to 60 days following the end of the program year.

The Commission disagrees. Subsection (j) requires the annual report be submitted no later than 45 days after the end of the program year. This filing timeline is necessary for the Commission and LDCs to comply with the statutory requirement that subsequent applications must be made no later than 3 years following the previous application.

CenterPoint recommended additional language in subsection (j) to clarify how ECP rates may be adjusted after each program year.

The Commission agrees and adopts subsection (j) with changes to require that the annual report include a rate adjustment request which adjusts the ECP rates then in effect to (1) true up the difference between the program costs and actual amounts collected through the ECP rates in effect during the previous program year; and (2) account for any changes to the proposed ECP costs and projected recovery.

Under the schedule for filing annual reports and subsequent applications reflected in subsections (d)(2) and (j), the LDC's first annual report will be due no later than 45 days following the end of the program year as that term is defined in subsection (b). The next program year will begin on the same day as the previous year, and any adjusted rates may begin 30 days after the LDC submits the annual report.

Similarly, the LDC must submit its annual report on its second program year 45 days following the end of the second program year. At the same time, the LDC must submit its subsequent application. The next portfolio term and program year start dates will depend on when the Commission approves the subsequent ECP application.

The Commission demonstrates the timeline with the following example. Suppose the Commission approves an ECP at an open meeting on May 15, 2024. The start date for the ECP is June 1, 2024, because the definition of program year in subsection (b) is "the 12-month period beginning the first day of the month following the Commission's approval of the ECP portfolio." The program year would end on May 31, 2025. According to subsection (j), the first annual report must be submitted no later than 45 days following the end of the program year, which would be July 15, 2025. The ECP rate charged during the first program year would remain in effect until an adjusted rate is implemented based on the first annual report filing. An LDC could begin charging any adjusted ECP rate 30 days after filing the annual report. The second program year would begin on June 1, 2025, and end on May 31, 2026. The second annual report and subsequent ECP application would both be due on July 15, 2026. The subsequent ECP application's program year would depend on the date the subsequent application is approved at the Commission open meeting. The ECP rate implemented after the second annual report filing would remain in effect until the subsequent ECP portfolio application is approved. The Commission adopts changes in subsection (h)(4) and (h)(5) to clarify the effect of existing ECP rates during review of an annual report or application.

Atmos Cities recommends replacing "preceding" with "program" in proposed subsection (j)(1)(B), which required in the annual report a description of each ECP offered under the portfolio that includes the program's performance for the preceding year, actual program expenditures, and program results.

The Commission agrees and adopts subsection (j)(1)(B) with this clarification.

Subsection (k) relates to the requirement for an LDC to reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under §7.480.

Regarding subsection (k), CenterPoint commented requesting that an LDC's reimbursement costs not be counted for any ECP measurement purpose since they are unavoidable costs that have no bearing on the actual performance of the ECP. To that end, CenterPoint suggested adding the following: An LDC's reimbursement costs shall be recoverable by the LDC but is not

subject to (1) the 15% cap on administrative costs described in subsection (g) of this section or (2) any cost/benefit test used by the Commission to determine the performance of an LDC's ECP in an annual report filed pursuant to subsection (j) of this section.

The Commission disagrees. The Commission intends to treat these costs as they are treated in an IRA proceeding, in which reimbursement costs cannot be passed to customers as part of the IRA rate.

Again, the Commission appreciates the review and input from commenters. As described above, the Commission adopts changes to subsections (b), (c), (d), (e), (g), (h), (i) and (j). The remaining subsections are adopted without changes. Those subsections are summarized below.

New subsection (a) explains the energy conservation program authority given to an LDC to offer such programs to current and prospective residential and commercial customers pursuant to House Bill 2263. Subsection (a) also states that the Commission has exclusive original jurisdiction over energy conservation programs implemented by LDCs.

New subsection (f) describes what the ECP portfolio must accomplish, including that it be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and to change customer behavior as necessary.

New subsection (k) states the procedure for an LDC implementing an approved ECP portfolio to reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the reimbursement amount.

The Commission adopts the new rule pursuant to Texas Utilities Code, §§104.401-104.403.

Statutory authority: Texas Utilities Code, §§104.401-104.403.

Cross-reference to statute: Texas Utilities Code, Chapter 104.

§7.480. *Energy Conservation Programs.*

(a) Energy conservation program authority. A local distribution company may offer to residential and commercial customers and prospective residential and commercial customers and provide to those customers an energy conservation program pursuant to this section and Texas Utilities Code, §§104.401-104.403. The Commission has exclusive original jurisdiction over energy conservation programs implemented by local distribution companies. A political subdivision served by a local distribution company that implements an energy conservation program approved by the Commission pursuant to this section shall not limit, restrict, or otherwise prevent an eligible customer from participating in the energy conservation program based on the type or source of energy delivered to its customers.

(b) Definitions.

(1) Administrative costs--All prudently incurred costs of creating, managing, and administering an ECP portfolio.

(2) Director--The Director of the Gas Services Department of the Oversight and Safety Division or the Director's delegate.

(3) Energy conservation program (ECP)--A particular program that promotes energy conservation or energy efficiency.

(4) ECP portfolio--The entire group of energy conservation programs offered to a service area by a local distribution company as described in subsection (f) of this section. The portfolio may consist of one or more programs.

(5) ECP rate--The energy conservation program rate approved by the Commission in the form of a monthly volumetric charge designed to recover an LDC's authorized administrative and portfolio costs.

(6) Gas Services--The Gas Services Department of the Oversight and Safety Division of the Commission.

(7) Local distribution company (LDC)--An investor-owned gas utility that operates a retail gas distribution system.

(8) Portfolio costs--All prudently incurred non-administrative costs that an LDC seeks to recover through the ECP rate to implement and deliver an ECP portfolio to customers and prospective customers, including but not limited to research and development costs, payment of rebates, material costs, the costs associated with installation and removal of replaced materials and/or equipment, and the cost of education and customer awareness materials related to conservation or efficiency.

(9) Portfolio term--The term during which an approved ECP portfolio will be in effect.

(10) Program year--The 12-month period beginning the first day of the month following the Commission's approval of the ECP portfolio.

(11) Research and development costs--The costs prudently incurred by an LDC to conduct market and engineering studies for the feasibility and design of potential ECPs. Research and development costs cannot exceed 5% of portfolio costs.

(c) General requirements.

(1) An LDC may recover costs of an ECP portfolio if the ECP portfolio is approved by the Commission pursuant to this section and the LDC implements the approved ECP portfolio. An LDC seeking to implement an ECP portfolio shall apply with Gas Services and receive a final order from the Commission before beginning to recover the approved costs of the ECP portfolio.

(2) An LDC applying for an ECP portfolio shall submit an application for each service area in which it seeks to implement an ECP.

(3) If the Commission approves the LDC's application or approves the application with modifications, the LDC may recover costs to implement the ECP portfolio, including costs incurred to design, market, implement, administer, and deliver the ECP portfolio. Any costs included in an ECP portfolio approved by the Commission shall be fully subject to review by the Commission for reasonableness and prudence during the LDC's next statement of intent rate proceeding. The LDC shall include support for this determination in its next statement of intent application. ECP costs that are imprudent or recovered from customers without approval of the Commission are subject to refund as determined by the Commission.

(d) Contents of application. An LDC may apply for approval of an ECP portfolio by submitting an application to Gas Services.

(1) Initial ECP portfolio application. An initial application for approval of an ECP portfolio shall include:

(A) a description of any existing energy conservation programs offered by the LDC in the applicable service area prior to the effective date of this section;

- (B) a list and detailed description of each proposed ECP;
- (C) the objectives for each proposed ECP;
- (D) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;
- (E) the proposed per-program year administrative costs for each ECP and the ECP portfolio;
- (F) the proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by customers;
- (G) the proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by shareholders;
- (H) the projected annual consumption reduction per customer class for each ECP and the ECP portfolio;
- (I) the projected annual net cost savings per customer class for each ECP and the ECP portfolio;
- (J) a copy of the notice to customers and an affidavit stating the method of notice and the date or dates on which the notice was given;
- (K) copies of written correspondence received by the LDC in response to the notice;
- (L) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if an ECP portfolio is approved;
- (M) copies of the proposed ECP rate schedule or schedules;
- (N) calculation of the proposed ECP rate;
- (O) normalized historical annual volumes per customer class;
- (P) projected volumes for the upcoming program year per customer class;
- (Q) any other information that supports determination of the ECP rate; and
- (R) the name of the LDC's representative, business address, telephone number, and email address.

(2) Subsequent ECP portfolio application. An LDC shall re-apply for approval of its ECP portfolio in accordance with this paragraph. A subsequent application shall be filed 45 days following the end of the ECP portfolio's second program year. A subsequent application for approval of an ECP portfolio shall include:

- (A) a list and detailed description of each proposed ECP;
- (B) the objectives for each ECP;
- (C) the proposed per-program year portfolio costs for each ECP and the ECP portfolio;
- (D) the proposed per-program year administrative costs for each ECP and the ECP portfolio;
- (E) the actual historical per-program year portfolio costs for each ECP and the ECP portfolio;
- (F) the actual historical per-program year administrative costs for each ECP and the ECP portfolio;

(G) the historical and proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by customers;

(H) the historical and proposed per-program year amount and proportion of ECP portfolio costs and administrative costs to be funded by shareholders;

(I) the projected per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year consumption reduction per customer class for each ECP and the ECP portfolio over the previous portfolio term;

(J) the projected per-program year net cost savings per customer class for each ECP and the ECP portfolio over the new portfolio term and the actual historical per-program year cost savings per customer class for each ECP and the ECP portfolio over the previous portfolio term;

(K) copies of any proposed advertisements or promotional materials that the LDC intends to distribute to customers if the ECP portfolio is approved;

(L) copies of the proposed rate schedule or schedules;

(M) calculation of the proposed ECP rate;

(N) normalized historical annual volumes per customer class;

(O) projected volumes for the upcoming program year per customer class;

(P) any other information that supports determination of the ECP rate; and

(Q) the name of the LDC's representative, business address, telephone number, and email address.

(3) Notice of subsequent application. If in the subsequent application the LDC proposes a new ECP or proposes changes to an existing ECP such that costs to customers increase, the LDC shall provide notice in accordance with subsection (e) of this section and include in its subsequent application the documents required by paragraph (1)(J) and (K) of this subsection.

(4) Addition of new programs to existing ECP portfolio. An initial or subsequent application may contain information on one or more ECPs. If an LDC proposes to add a new ECP to its portfolio after approval of its initial application, the LDC shall propose the new ECP in its subsequent application and include the information required by paragraph (1) of this subsection for the proposed new ECP.

(e) Notice and promotional materials.

(1) Notice. An LDC shall print the notice of its application for an ECP portfolio in type large enough for easy reading. The notice shall be the only information contained on the piece of paper on which it is written or in the emailed notice if applicable. An LDC may give the notice required by this section either by separate mailing or by otherwise delivering the notice with its billing statements. Notice may be provided by email if the customer to receive the notice has consented to receive notices by email. Notice by mail shall be presumed to be complete three days after the date of deposit of the paper upon which it is written, enclosed in a postage-paid, properly addressed wrapper, in a post office or official depository under the care of the United States Postal Service. The notice shall be provided in English and Spanish. The notice to customers shall include the following information:

(A) a description of each ECP in its proposed portfolio;

(B) the effect the proposed ECP portfolio is expected to have on the rates applicable to each affected customer class and on an average bill with and without gas cost for each affected customer class;

(C) the service area in which the proposed ECP portfolio would apply;

(D) the date the proposed ECP portfolio application was or will be filed with the Commission;

(E) the LDC's address, telephone number, and web address of the specific webpage on which the ECP portfolio application may be obtained; and

(F) a statement that any affected person may file written comments concerning a proposed ECP portfolio with Gas Services by email to MOS@rrc.texas.gov and to an email address for the LDC included in its notice.

(2) Promotional materials. Any ECP program or portfolio promotional materials shall be provided to customers in English and Spanish.

(f) Portfolio. An ECP portfolio:

(1) shall be designed to overcome barriers to the adoption of energy-efficient equipment, technologies, and processes, and be designed to change customer behavior as necessary; and

(2) may include measures such as:

(A) direct financial incentives;

(B) technical assistance and information, including building energy performance analyses performed by the LDC or a third party approved by the LDC;

(C) discounts or rebates for products; and

(D) weatherization for low-income customers.

(g) Cost recovery mechanism. The application for approval of an ECP portfolio shall include a proposed ECP rate. Cost recovery shall be limited to the incremental costs of providing an ECP portfolio that are not already included in the then-current cost of service rates of the LDC. Administrative costs in excess of 15% of the portfolio costs shall not be included in the ECP rate or recovered from customers in any way. The cost recovery mechanism applies to both initial and subsequent ECP applications.

(1) A separate ECP rate shall be calculated for each customer class in accordance with the following formula:  $ECP\ rate = (CCR\ per\ Class + BA\ per\ Class) / Projected\ Volume\ per\ Class\ per\ Program\ Year$ , where:

(A) CCR, Current Cost Recovery, is all projected costs attributable to the LDC's energy conservation portfolio for the program year;

(B) BA, Balance Adjustment, is the computed difference between CCR collections by class and expenditures by class, including the pro-rata share of common administrative costs for each class for the program year and collection of the over/under recovery during the prior program year; and

(C) Class is the customer class to which the ECP rate will apply.

(2) An ECP rate may not exceed \$0.20/Mcf for the residential customer class and \$0.20/Mcf for the commercial customer class.

(3) Upon the Commission's approval of the ECP rate, the LDC shall update its residential and commercial ECP rate schedules to reflect the approved ECP rate.

(h) Procedure for review. The Director of Gas Services shall ensure that applications for ECP portfolios are reviewed for compliance with the requirements of Texas Utilities Code, §§104.401-104.403 and this section. Upon completion of the review, Gas Services will prepare a written recommendation, which shall be provided to the applicant LDC. The written recommendation shall be provided to the applicant LDC within 120 days of the date the application is filed with Gas Services.

(1) The recommendation may include:

(A) approval of the application for an ECP portfolio as filed;

(B) approval of the application for an ECP portfolio with modifications; or

(C) rejection of the application for an ECP portfolio.

(2) The recommendation shall be submitted to the Commission for decision at a scheduled open meeting.

(3) If the Commission approves an ECP portfolio application at an open meeting, the LDC shall file the applicable ECP rate schedules in accordance with subsection (i) of this section.

(4) Previous ECP rates shall remain in effect while an annual report or a subsequent ECP portfolio application is under review.

(5) Previous ECP rates shall cease to be in effect 30 days after an LDC fails to meet a required filing deadline.

(6) Neither the review of an ECP portfolio application nor the review of a proposed ECP rate or rate schedule is a ratemaking proceeding for the purposes of Texas Utilities Code § 103.022.

(i) Rate schedules. The LDC shall include proposed rate schedules with its initial application, each subsequent application, and each annual report for an ECP portfolio. Each ECP rate schedule shall be made on a form approved by the Commission and made available on the Commission's website. If the LDC's proposed ECP portfolio is approved by the Commission, the approved rate schedules shall be electronically filed by the LDC in accordance with §7.315 of this title (relating to Filing of Tariffs). If an ECP rate is adjusted in an annual report filing, the LDC shall also file an adjusted rate schedule. An ECP rate approved by the Commission at an open meeting and implemented by the LDC or adjusted in an annual report filing pursuant to subsection (j) of this section shall be subject to refund unless and until the rate schedules are electronically filed and accepted by Gas Services in accordance with §7.315 of this title and reviewed for prudence and reasonableness in a subsequent statement of intent rate proceeding.

(j) ECP annual report.

(1) An LDC implementing an approved ECP portfolio pursuant to this section shall file an ECP annual report with the Commission. The report shall be filed each year an approved ECP portfolio is implemented and shall be filed no later than 45 days following the end of the LDC's program year. The ECP annual report shall be in the format prescribed by the Commission and shall include the following:

(A) an overview of the LDC's ECP portfolio;

(B) a description of each ECP offered under the portfolio that includes the program's performance for the program year, including any evaluation of cost-effectiveness, actual program expenditures, and program results;

(C) the LDC's planned ECPs for the upcoming program year;

(D) for each applicable customer class, rate schedules detailing program expenditures for the program year, actual amounts collected for the program year, and the calculation of the adjusted ECP rate;

(E) the number of customers participating in each ECP per customer class per the applicable program year;

(F) normalized historical annual volumes per customer class per the applicable program year; and

(G) projected volumes for the upcoming program year per customer class.

(2) In its annual report, an LDC shall include an ECP rate adjustment request if applicable. A separately adjusted ECP rate shall be calculated for each customer class in accordance with the formula described in subsection (g) of this section. The rate adjustment request shall adjust the ECP rates then in effect to:

(A) true up the difference between the program costs and actual amounts collected through the ECP rates in effect during the previous program year; and

(B) account for any changes to the proposed ECP costs and projected recovery.

(3) The LDC shall not implement any adjusted ECP rates until 30 days after submitting the annual report.

(4) Each annual report filed with the Commission shall be made available on the LDC's website.

(k) Reimbursement. An LDC implementing an approved ECP portfolio pursuant to this section shall reimburse the Commission for the LDC's share of the Commission's estimated costs related to administration of reviewing and approving or denying cost recovery applications under this section. The Director shall estimate the LDC's share of the Commission's annual costs related to the processing of such applications. The LDC shall reimburse the Commission for the amount so determined within 30 days after receipt of notice of the amount of the reimbursement.

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

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Railroad Commission of Texas

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For further information, please call: (512) 475-1295



## PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

### CHAPTER 24. SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

#### SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

## 16 TAC §24.240

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §24.240, relating to Water and Sewer Utility Rates After Acquisition with changes to the proposed text as published in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5598) and will be republished. The new rule implements Texas Water Code (TWC) §13.3011, added by House Bill (HB) 1484, enacted by the 87th Texas Legislature (R.S.). It allows an acquiring water and sewer utility (transferee) to apply rates from an existing tariff to the customers of an acquired system without initiating a new rate proceeding. To be eligible to apply, an existing tariff must be currently in force and filed with a regulatory authority for another water and sewer system owned by the transferee. The rule is adopted under Project No. 53924.

The commission received comments on the proposed rule from CSWR-Texas Utility Operating Company, (CSWR), Double Diamond Entities (Double Diamond), the Office of Public Utility Counsel (OPUC), Texas Association of Water Companies (TAWC), and Texas Water Utilities (TWU).

A public hearing was requested by TAWC and was held on January 23, 2024. AQUA Texas, Inc. (AQUA), CSWR, TAWC, TWU, OPUC and Mr. David Miller (on behalf of The Retreat, which filed written comments with the Double Diamond) provided comments.

### General Comments

TAWC commented that the proposed rule does not apply the "filed rate doctrine" legal principle as intended by the statute and, as drafted, would create obstacles for a transferee in extending its pre-existing rates to acquired customers. TAWC recommended that the commission extend previously approved tariff and the rates selected by the transferee to new customers without further examination in the Sale, Transfer, and Merger (STM) proceeding to achieve the goals of TWC §13.3011.

### Commission Response

The commission disagrees that the filed rate doctrine is relevant to the outcome of this rulemaking proceeding. Neither the statutory text of TWC §13.3011 - the statute being implemented in this rulemaking proceeding - nor the bill analysis for HB 1484 refer to the "filed rate doctrine." Accordingly, analyzing the similarities between a common law legal principle, and TAWC's interpretation of this principle, and the statutory text being implemented in this rulemaking proceeding is unnecessary. The commission interprets the statutory text directly.

The commission declines to modify the rule to extend previously approved rates to new customers without further examination for reasons discussed below.

TAWC, TWU, and CSWR opposed the proposed rule on the grounds that the rate review process it establishes is inconsistent with HB 1484. Both TAWC and CSWR recommended that no additional criteria should be used to evaluate an initial rate request beyond what is contemplated under TWC §13.3011.

TWU stated that the proposed rule goes beyond the two statutory criteria for approving an initial rate request and uses the just and reasonable standard provided by TWC §13.182(a) as the benchmark for evaluating an initial rate requested under TWC §13.3011. TWU further stated that while the commission uses the criteria under TWC §13.182(a), it ignores TWC §13.182(b) which requires rates to not be unreasonably preferential, prejudi-

cial, or discriminatory, and instead must be sufficient, equitable, and consistent in application to each class of consumers. Rates must recover a level of revenue that permits the utility an opportunity to earn a reasonable return on its invested capital and preserves the utility's financial integrity. TWU stated that the proposed approval process would introduce uncertainty regarding the approval of initial rates and may lead to unintended consequences of discouraging acquisitions.

TWU asserted that initial rates that are filed with a regulatory authority and are in effect for another water or sewer system owned by the transferee automatically meet all four statutory requirements under TWC §§13.182(a), 13.182(b), 13.183(a) and 13.190(a). Most significantly, TWC §13.182(a) is satisfied because the rates in a tariff filed with a regulatory authority for another system have already been reviewed and found just and reasonable by the regulatory authority.

CSWR stated that the proposed rule is inconsistent with TWC §13.3011 and creates a vague and potentially complicated rate review procedure in an STM proceeding that will delay approval of acquisitions of substandard systems.

In contrast, OPUC and Double Diamond supported the proposed rule and argued that the requested authorized acquisition rates must be scrutinized by the commission to ensure that they are just and reasonable. OPUC and Double Diamond stated that applying a pre-existing water or sewer tariff that is not tailored to customers of an acquired system could routinely lend itself to rate shock for affected ratepayers. OPUC commented that TWC §13.3011 provides the commission with the authority to approve or deny adoption of an in-force rate taken from an existing tariff. Additionally, OPUC opined that without proper safeguards in place, application of HB 1484 could result in the imposition of a higher tariff on the customers of the acquired system without an adequate prudence review from which rates should be derived. OPUC supported commission staff's efforts to ensure that there are adequate safeguards to mitigate rate shock to customers of the acquired system.

#### Commission Response

The commission disagrees that the only criteria the commission should consider are the two criteria provided in TWC §13.3011. The two criteria listed - (i) shown in a tariff filed with a regulatory authority, and (ii) in force for the other water and sewer system on the date the STM application is filed - are not characterized in the statute as considerations. They are a description of the type of initial rates the transferee is permitted to request authorization to charge. This is plain from the statutory phrasing "may request" initial rates for the service that are...". TWC has many instances of the Legislature indicating that the commission "shall consider" certain criteria when evaluating a certain decision. TWC §13.3011 contains no such language. The most straightforward reading of TWC §13.3011's use of descriptive language is that paragraphs (1) and (2) are necessary, but not sufficient conditions for authorization of a requested rate. Moreover, TWC §13.182(a) unambiguously requires that the commission "shall ensure that every rate made, demanded, or received by any utility shall be just and reasonable." Without specific language countermanding this directive in TWC §13.3011, the commission cannot approve a request for authorized acquisition rates without ensuring that the requested rates are just and reasonable.

The commission also disagrees with TWU that a rate contained in an in-force tariff that is filed with a regulatory authority is, for

that reason alone, just and reasonable as applied to all customers or water systems. In response to proposed subsection (d)(1), which would require the transferee to provide a revenue comparison using existing and requested authorized acquisition rates, TWU stated "a comparison of revenues generated at the existing rates to the revenues generated at the requested initial rates has no bearing on the just and reasonableness of the requested initial rates because these rates were derived from two totally separate costs of service, {emphasis added}." TWU further contended that such an approach is "antithetical to the concept of cost of service ratemaking." While TWU was not addressing the immediate point, its analysis perfectly captures why an approved rate for one system is not necessarily just and reasonable for another: because the two systems have two distinct costs of service. As addressed further below, the statutory prohibition against requiring a rate case - which would be necessary to conduct a full cost of service analysis - requires the commission to use a more general facts-and-circumstances analysis to determine whether a proposed rate is just and reasonable under this section. It does not, as argued by TWU, CSWR, and TAWC, mean that the commission must accept that a rate deemed just and reasonable for one system is automatically just and reasonable for another.

The commission also disagrees with TWU's argument that the commission's focus on just and reasonable rates ignores TWC §13.182(b), which TWU interprets to require that rates must recover a level of revenue that permits the utility an opportunity to earn a reasonable return on its invested capital and preserves the utility's financial integrity. Regarding the financial integrity of the utility, the adopted rule requires the commission to consider whether the rates are just and reasonable for the customer and the transferee. Furthermore, every STM proceeding requires an evaluation of the financial wellbeing of the transferee and its ability to provide continuous and adequate service. With regards to TWU's claim that the transferee must be provided an opportunity to earn a reasonable return on its invested capital, the commission notes that - unlike the customers of the acquired system - the transferee has complete discretion over whether to complete the transaction or request authorized acquisition rates. The transferee also has the option to initiate a rate case to ensure it is receiving an appropriate rate of return on its invested capital. Outside of the context of a rate case, the commission cannot adjust a rate to, among other things, ensure the transferee is earning a reasonable rate of return.

The commission agrees with CSWR that the proposed rule creates a vague and potentially complicated rate review that could delay the approval of acquisitions of substandard systems. Accordingly, the commission modifies the rule to clarify how the commission will review requests for authorized acquisition rates. These modifications are designed to provide procedural clarity on how the commission will process requests for authorized acquisition rates, provide certainty on the outcome of the request for authorized acquisition rates before the transferee closes on the transaction, limit the scope of the commission's rate review to ensure the statutory prohibition on requiring a rate case is fully captured in the rule, and provide general guidance on the criteria the commission may consider when reviewing the request.

The commission adds new (c)(5) to clarify that the commission will take the transferee's request to charge authorized acquisition rates into account as part of the public interest determination on whether the proposed transaction serves the public interest under §24.239(h). The rates that a customer will be charged, and that the transferee will be able to collect, could po-



tentially influence several of the public interest criteria contained in §24.239(h)(5). To facilitate this determination, the commission also modifies the requirements of proposed subsection (d) to require the applicant to include an explanation of how granting the request to charge authorized acquisition rates would change the public interest analysis under any of the criteria in §24.239(h)(5).

The commission further modifies the rule to include a new subsection (f), that codifies how the commission will conduct its review. Under subsection (f)(1), which is modeled after the hearing provisions of §24.239, the commission will determine whether a hearing on the requested rates is necessary to determine if those rates are just and reasonable. If the commission elects to hold a hearing, the commission will not approve the requested rates unless they are found to be just and reasonable. However, if the commission determines that a hearing is unnecessary and that the transferee has complied with the applicable notice requirements, the request will be approved in the commission's final order approving the transaction.

The commission also adds subsection (f)(2) to clarify the scope of the commission's rate review. Because the commission is statutorily prohibited from requiring a rate case, the commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances. Subsection (f)(2)(A) lists several restrictions on the scope of the commission's rate review that address commenters' concerns that this rate review will function as a de facto rate case. Specifically, the transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding; establishing the cost of service for the acquired water or sewer system; establishing substantial similarity between the acquired system and the system to which the rates already apply; or defending the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.

Subsection (f)(2)(B) provides further clarification on the restrictions in subsection (f)(2)(A) by providing examples of factors the commission may consider without violating the above restrictions. These considerations include whether any charges or significant components of the requested rates would be unjust or unreasonable if applied to the acquired water or sewer system. In many instances, a system-specific or local pass through charge will be either explicitly listed on a tariff or rolled directly into rates. Such a charge may provide evidence that the requested rates should not be applied to another system to which the identified charge does not apply.

Because investigating such charges does not require a rate proceeding or cost of service determination for the acquired system, it is within the scope of the commission's rate review.

Similarly, the commission may consider whether the customers of the acquired system are receiving continuous and adequate service. This is a potentially important consideration for the customers and the transferee. If customers are not receiving continuous and adequate service, that may suggest that either the existing rates are insufficient to ensure such service or that the transferee will have to operate at a loss to make the necessary improvements. This is especially relevant in situations where there are identified improvements that will lead to known and measurable increases in the cost of serving the acquired system. Conversely, if a system is fully functioning and providing a high level of service, that may suggest that authorized acquisition rates that are significantly higher than the existing rates would not be just and reasonable. These considerations are appropri-

ately within the scope of the commission's rate review, because evaluating specific costs associated with system improvements necessary to provide continuous and adequate service does not require a rate proceeding or a comprehensive evaluation of the system's cost of service.

This new subparagraph also clarifies that the commission may consider evidence regarding whether the requested rates are generally consistent with the rates charged to similar systems. In other words, the commission will not require that the two specific systems in question be similar to each other (i.e., substantial similarity), but the commission can consider macro-level data, if available and appropriate, on the rates that are generally charged to systems with similar characteristics. This factor is not, in itself, determinative of whether the rates are just and reasonable. But, if there is evidence that the requested rates are relatively high or that the existing rates are relatively low, that may be indicative of whether the requested rates are just and reasonable.

Finally, the commission modifies the rule to clarify that the commission is not limited to the factors enumerated in subsection (f)(2)(B). The commission may consider any pertinent facts and circumstances that are not proscribed by subsection (f)(2)(A). The commission also notes, without modifying the rule, that the list of factors is permissive and each enumerated factor may not be relevant in each proceeding under this section.

Section 24.239 -- Merge 16 TAC §24.240 with 16 TAC §24.239

TAWC, TWU, and AQUA suggested the commission should implement TWC §13.3011 in the existing STM rule, 16 TAC §24.239, rather than adopting a new rule.

Commission Response

Section 24.239 was not noticed in this project and is, therefore, beyond the scope of this proceeding. The commission may consider combining these sections in a future rulemaking project.

Proposed §24.240(a) - Applicability

Proposed §24.240(a) limits the application of the rule to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011.

TWU recommended modifying subsection (a) to use the term "initial rates" instead of "authorized acquisition rates." to conform to its recommended definitions.

Commission Response

The commission declines to accept the modifications recommended by TWU, because the commission did not accept TWU's recommendation to delete the definition of "authorized acquisition rates." Refer to commission response under "Proposed §24.240(b) - Definitions."

Proposed §24.240(b) - Definitions

Proposed §24.240(b) defines "authorized acquisition rates" as initial rates that are in force and shown in a tariff filed with a regulatory authority by an acquiring utility for another water or sewer system owned by it. "Initial rates" are defined as rates charged by an acquiring utility to the customers of an acquired system upon acquisition.

TWU recommended modifying the definitions in the proposed rule to use the terms "transferor" and "transferee" that are found in §24.239 to promote uniformity between these rules.

## Commission Response

The commission agrees with TWU's recommendation and modifies the rule to use the terms "transferor" and "transferee." The commission also modifies the rule to use the term "transaction" in place of "acquisition" where necessary to align with use of the term "transaction" in §24.239.

The commission also re-sequences the definitions to appear in alphabetical order.

TWU recommended deleting the definition of "authorized acquisition rate" to minimize use of confusing phrases like "requested authorized acquisition rate" and to avoid having to use a defined term - "initial rates" - in the definition of another defined term. TWU opined that deleting this definition also allows for the use of simplified terms like "requested initial rates" and "approved initial rates." TWU provided recommended language for terms "initial rates" and "existing rates."

TAWC also stated that the definitions of "Initial rates" and "Authorized Acquisition Rates" are duplicative.

## Commission Response

The commission declines to make the changes requested by TWU. The commission disagrees that "initial rates" and "authorized acquisition rates" are duplicative. "Initial rates" refers to the rates that are paid by the customers of the acquired system - regardless of whether such rates are the "existing rates" they previously paid or are "authorized acquisition rates." This is also consistent with the plain meaning of "initial" (i.e. first) and the statutory language allowing the transferee to request approval to charge "initial rates for the service that are:" {emphasis added}." The use of "that" sets off a restrictive adjective clause identifying which initial rates the utility may request (i.e., in force and shown in a filed tariff). The commission uses the term "authorized acquisition rates" to refer to this category of initial rates. The commission, however, modifies the definition of "initial rates" to reflect that an "initial rate" can be an existing rate, an authorized acquisition rate, or another rate authorized by law. This modification will provide clarity and prevent unintended consequences, such as reading the provisions of this rule to disallow a utility from retaining temporary rates after an STM, as is permitted under §24.239.

## Proposed §24.240(c)(1)

Proposed §24.240(c)(1) requires an acquiring utility to use existing rates as initial rates until the commission approves other rates.

TWU recommended minor clarifying changes to proposed subsection (c)(1) to conform with its proposal to delete the definition of "authorized acquisition rate" and continue the use of terms "transferor" and "transferee."

## Commission Response

The commission modifies the proposed rule and replaces the terms "acquiring utility" and "acquired utility" with "transferee" and "transferor" as recommended by TWU but declines to make other changes to subsection (c)(1) because the commission did not accept TWU's recommendation to delete the definition of "authorized acquisition rates."

The commission uses these updated terms, as applicable, throughout this order.

TAWC argued that proposed subsection (c)(1) contemplates a gap period between STM approval and approval of the request to

charge authorized acquisition rates after STM approval. TAWC and CSWR recommended that the commission must approve initial rates simultaneously with approval of the STM transaction to provide certainty to the STM applicants about the rates that will be in place after an STM transaction is completed. TAWC noted that certainty about rates prior to completing a system acquisition will allow sufficient time to the transferee to prepare to switch customers to new rates.

## Commission Response

The commission agrees with TAWC that the commission should review the STM and the request for approval to charge authorized acquisition rates simultaneously. Further, the commission agrees that, if approved, the transferee is required to begin charging the authorized acquisition rates after the commission has approved the transaction in its final order. The commission modifies the rule accordingly.

## Proposed §24.240 (c)(3)

Proposed §24.240(c)(3) clarifies that an authorized acquisition rate must be in force and shown in a tariff filed with a regulatory authority by the transferee for another water and sewer system on the date an STM application is filed.

TWU recommended deleting proposed subsection (c)(3) because it will be redundant with the new definition of "initial rates" recommended by TWU.

TAWC stated that subsection (c)(3) aligns with the language in TWC §13.3011 and recommended that this language be added to 16 TAC §24.239.

## Commission Response

The commission declines to delete subsection (c)(3) as recommended by TWU, because the commission did not adopt the corresponding definition of "initial rates" proposed by TWU.

The commission also declines to move the language of subsection (c)(3) to §24.239 as recommended by TAWC, because §24.239 was not noticed in this proceeding and modifications to that section are, therefore, beyond the scope of this rulemaking.

## Proposed §24.240(c)(4) - Multiple in-force tariffs

Proposed §24.240(c)(4) establishes that if the transferee has multiple in-force tariffs filed with regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

TAWC recommended deleting proposed subsection (c)(4), stating that the utility should be permitted to choose the approved tariff rates to use regardless of which regulatory authority has approved them. TAWC opined that proposed subsection (c)(4) would create the possibility of disparate rate treatment using in-force tariffs not selected by the utility.

TWU recommended modifying subsection (c)(4) to require a showing of good cause to approve an initial rate that is shown in a tariff on file with a regulatory authority that does not have original jurisdiction over the rates for the systems that will be transferred as part of an STMs.

## Commission Response

The commission agrees with TAWC that the transferee may choose which in-force tariff to use for its request for authorized acquisition rates but declines to remove from the rule the

presumption that the in-force tariff should be one approved by the same regulatory authority. Each regulatory authority with ratemaking authority in Texas has its own practices, preferences, and tendencies with regards to ratemaking outcomes. All else being equal, using a rate that has been previously approved by the commission is more likely to reflect an outcome that the commission would find just and reasonable than a rate approved by a different regulatory authority. However, this is a rebuttable presumption because many other factors more directly contribute to the justness and reasonableness of a rate. Furthermore, because the commission must consider all of the relevant facts and circumstances in determining whether the requested rates are just and reasonable, the commission does not require a showing of good cause to use rates approved by a different regulatory authority as requested by TWU.

OPUC recommended adding language under §24.240(c) that would expand the scope of the rebuttable presumption and provided language that specifies that if the transferee has multiple in-force tariffs filed with the regulatory authority, an in-force tariff within the same geographic area or county as the acquired system would be used as the authorized acquisition rates when deemed to be in the public interest.

#### Commission Response

The commission declines to accept OPUC's recommendation to create a rebuttable presumption that the authorized acquisition rates should be based on a tariff within the same geographic area or county as the acquired system. An underlying premise behind the included rebuttable presumption is that the commission, in virtually all cases, will be more familiar with its own ratemaking processes and therefore possess a better ability to assess if rates it previously approved are appropriate for the acquired system than rates approved by a different regulatory authority. A similar premise does not apply to geographic area. For example, in many counties there are dense urban areas situated only a few miles away from sparsely populated rural areas, or there are large disparities in terms of existing quality of service, customer class profile, or access to surface water. When relevant, the commission will consider the geographic area as part of its just and reasonable determination, but this may not be a relevant factor in every situation.

#### Proposed §24.240(c)(5) - Phased-in rates

Proposed §24.240(c)(5) states if the in-force tariff contains rates that are phased in over time, any step of the phase-in rates included in the tariff may be considered an authorized acquisition rate if it is in the public interest.

TWU recommended clarifying that a request for an initial rate that has a phased-in rate should be construed as a request for the phase that is in place at the time the application under TWC §13.301 is filed, all subsequent phases, and the final rate.

TAWC commented that subsection (c)(5) is "unclear and somewhat contradictory" as it "seems to contemplate simultaneously using both a selected step of a set of phased rates in an in-force tariff and the same phase-in schedule from an in-force tariff." TAWC argued that transferees should be allowed to select rates from any current phase of an in-force tariff as an authorized acquisition rate as there is "no such prohibition in TWC §13.3011."

On the other hand, OPUC supported the proposed rule that allows a phased-in approach if the in-force tariff contains rates that are phased-in over time. OPUC recommended that any rate in a multi-phased tariff may be deemed a rate in-force - by virtue of

its inclusion in the tariff and may be given effect by the commission subject to certain exceptions like pass-through rates.

#### Commission Response

The commission generally agrees with TWU that authorized acquisition rates should use rates that are in effect at the time the application is filed, and that the applicable rates will proceed through each subsequent phase, including the final phase. The commission modifies the rule to state that, unless determined by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customer of the acquired water or sewer system. The commission also modifies the rule to clarify that the commission's review of whether the requested rates are just and reasonable will include an evaluation of whether the final phase of the requested rates are just and reasonable. To facilitate this evaluation, the commission further modifies the rule to clarify that the application must include financial projects, rate schedules, and billing comparisons for each phase in the tariff.

The commission also agrees with TAWC and OPUC that the transferee can request rates based on a phase other than the phase that is currently in place for customers to which the tariff already applies. The commission modifies the rule such that the commission may approve rates that use an earlier phase than is currently in place, or establish a different schedule for the effective period of each phase, if necessary to moderate the effects of a rate increase on customers.

This approach establishes an appropriate balance by ensuring that the final rates are just and reasonable while still offering the potential to mitigate rate shock when the in-force tariff contains a phased-in rate structure.

#### Proposed §24.240(d)(1)

Proposed §24.240(d)(1) requires an application for authorized acquisition rates to include a comparison of expected revenues under the acquired utility's existing rates and the requested authorized acquisition rates.

TAWC recommended that subsection (d)(1) should only require financial projections for expected revenues from the requested authorized acquisition rates, instead of the acquired utility's existing rates that the applicant is not seeking to use.

TWU stated that comparison of revenues generated at the existing rates with the revenues generated at the requested initial rates, as required under subsection (d)(1), has no bearing on the just and reasonableness of the requested initial rate because these rates are derived from two separate costs of service and is antithetical to the concept of cost-of-service ratemaking. TWU suggested that for revenue comparison, and for ascertaining if the initial rates could result in the transferee overearning, annual reports filed by the transferee would be more appropriate and ensure a holistic review of the transferee's overall financial position.

#### Commission Response

The commission declines to accept the recommendations from both TAWC and TWU to remove the revenue comparison between existing and authorized acquisition rates from the proposed rule. The commission agrees with TWU's argument that comparing rates derived from two separate costs of service has no bearing on the just and reasonableness of the requested rates under a conventional cost of service ratemaking. However, as noted by TWU and other commenters, a conventional, compre-

hensive cost of service ratemaking is statutorily prohibited in the context of requests for authorized acquisition rates. However, the change in expected revenues, if the requested rates are approved, is pertinent to a relevant-facts-and-circumstances analysis of the requested rates. If, for example, granting the request would result in an extremely large increase in expected revenues, but there is no corresponding evidence that any system improvements are necessary to provide continuous and adequate service, the commission may consider this indicative that the requested rates are not just and reasonable.

The commission also disagrees with TWU's argument that the commission should instead evaluate the transferee's annual reports. Annual reports may not provide a breakdown of the transferee's financial information by system. Furthermore, requiring a revenue comparison does not preclude the commission from considering the transferee's annual reports, when appropriate.

#### Proposed §24.240(d)(2) - Capital improvements plan

Proposed §24.240(d)(2) requires a capital improvements plan for the acquired system to be included in the application.

TAWC and TWU argued that the transferee should not be required to provide a capital improvements plan. TWU stated that the requirement to provide a capital improvements plan is broad and vague and the proposed rule also does not clarify what form or type of information may be considered sufficient to fulfil this requirement.

#### Commission Response

The commission does not agree with commenters that the requirement to provide a capital improvements plan is broad or vague. However, the commission removes the requirement for a transferee to include a capital improvements plan in an application, because the commission regularly requires a capital improvements plan as a part of all STM applications based on the requirements of TWC §13.244. Therefore, the proposed requirement is duplicative and unnecessary.

#### Proposed §24.240(d)(3) - Explanation for the Tariff

Proposed §24.240(d)(2) requires an explanation for the tariff or rate schedule the transferee proposes to use as authorized acquisition rates if it has multiple eligible in-force tariffs or rate schedules.

TAWC recommended that proposed subsection (d)(3) be deleted, because it goes beyond the statutory requirements listed under TWC §13.3011.

#### Commission Response

The commission declines to modify the rule to remove the requirement that a transferee with multiple in-force tariffs provide an explanation for which tariff it based its request for authorized acquisition rates on, as requested by TAWC. The primary policy justification for allowing a transferee to immediately begin charging different rates without the full scrutiny of a rate case is to expedite transactions necessary to ensure the customers of the acquired system are served by an entity capable of providing them with continuous and adequate service. In the interest of this pressing policy objective, the transferee is permitted to use rates that have been approved by a regulatory authority, because such rates are the only available rates that have been subject to the scrutiny of a formal rate case. However, if the transferee has multiple tariffed rates that could have been applied, the existence of these other rates are part of the facts and circumstances surrounding the request and may be relevant to

the just and reasonable determination. The commission does, however, modify the proposed rule to clarify that this explanation must include a list of the eligible tariffs.

#### Proposed §24.240(d)(5) - Acquiring Utility and Affiliated Entities

Proposed §24.240(d)(5) establishes a requirement for an "acquiring utility" to disclose in its initial rates application if the acquired and acquiring systems are affiliates or have been affiliates in the preceding five years.

Double Diamond stated that the statutory intent of TWC §13.3011 is to facilitate acquisition of underperforming water and sewer systems by utilities that can operate these systems effectively, not to allow acquiring utilities to merge their affiliated utilities under the umbrella of the affiliated system that has the highest tariffed rates. Further, Double Diamond argued that such an outcome would circumvent the statutory intent of TWC §13.3011 and would adversely impact ratepayers because the rates being paid would be wholly disconnected from the cost of serving those ratepayers.

Double Diamond recommended adding a definition of the term "Acquiring Utility" that specifically excludes an entity that is seeking to merge with an affiliated entity. Double Diamond also recommended that the term "affiliate" be tied to the definition in §24.3(3) for "Affiliated Interest or Affiliate".

Alternatively, Double Diamond argued that a transferee requesting authorized acquisition rates for a transaction involving an affiliate be required to provide a cost of service or rates study to support its request.

#### Commission Response

The commission declines to tie the term "affiliate" to the definition of "affiliated interest or affiliate" in §24.3, because it is unnecessary. The definitions in §24.3 apply to the entirety of Chapter 24, including §24.240. The commission further declines to define "acquiring utility" as a term that specifically excludes a utility acquiring an affiliate, because this conflicts with the plain language of the statute. TWC §13.3011 provides that any "person" that files a request for the "purchase or acquisition" of a water or sewer system may request approval of authorized acquisition rates. As defined in both statute and commission rule, an affiliate relationship can be established with as little as a five percent interest. Accordingly, it is reasonable that even a person that already has such an ownership interest can still "purchase or {acquire}" the remainder of the system.

The commission also declines to require a cost of service study for all affiliate transactions requesting authorized acquisition rates. The commission agrees with Double Diamond that affiliates could attempt to use this rule to shift multiple systems to a higher rate without a rate case, and that requiring a cost of service study on known and measurable changes required to provide adequate service would not violate the statutory prohibition on requiring a rate proceeding. However, there is no statutory basis for imposing a materially higher mandatory requirement on affiliates than on nonaffiliates. Under the adopted rule, the commission will conduct a rate review of every request for authorized acquisition rates to ensure it results in just and reasonable rates. This review will consider the facts and circumstances involved in each case, and the applicant carries the burden to demonstrate that the rates are just and reasonable. Accordingly, an applicant may elect to provide such a study in support of its request.

In recognition of the risk of strategic transactions between affiliates designed to circumvent rate reviews, the commission does require requests for acquisition rates in transactions involving affiliates to include an explanation for why the transferee is requesting authorized acquisition rates instead of filing a rate case. This explanation will allow the commission to consider the reasoning in support of the request as part of the facts and circumstances assessed as part of its determination of whether the requested rates are just and reasonable.

Proposed §24.240(d)(7) - Documentation from most recent base rate case

Proposed §24.240(d)(7) requires an application for authorized acquisition rates to provide documentation from the most recent base rate case in which the requested authorized acquisition rates were approved.

TWU commented that information required under subsection (d)(7) is vague and goes beyond what is required statutorily. TAWC commented that subsection (d)(7) should be limited to the order or other evidence of a regulatory decision approving the tariff that the transferee seeks to use. TAWC argued that "documentation" from the base rate case that resulted in the regulatory approval is publicly available and should not be required. Such a requirement could entail thousands of pages that would unreasonably burden the STM application record.

#### Commission Response

The commission agrees that proposed subsection (d)(7) should be clarified. The commission modifies the requirement - as adopted (d)(4) - to clarify that the documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement that was used to establish the authorized acquisition rates. This information is necessary to allow the commission to evaluate if there are any charges or components in the requested rates that would be unjust or unreasonable, such as a pass through or other local or system-specific charge, if applied to the acquired system.

The commission also agrees that this information is typically publicly available online, so the commission modifies the rule to allow the transferee to provide a website where the information can be located in lieu of the actual documents.

Proposed §24.240(d)(8) - Other information

Proposed §24.240(d)(8) requires the applicant to provide any other information necessary to demonstrate that the authorized acquisition rates are just and reasonable and that the request is in the public interest.

TWU commented that the information required under subsection (d)(8) is both vague and goes beyond what is required statutorily. Further, TWU and TAWC argued that such a requirement could lead to contention on what form or type of information may or may not be sufficient in an application.

TAWC commented that subsection (d)(8) is unnecessary because discussions around the public interest of a transaction are already prescribed by the STM rule and application form.

#### Commission Response

The commission makes several modifications to proposed subsection (d)(8). To address TWU's concerns that the vagueness of the requirement could lead to sufficiency challenges to the application, the commission modifies the proposed requirement to require "additional explanation, including any applicable docu-

mentation, supporting the request to charge authorized acquisition rates, including: This modification will allow the transferee to articulate the facts and circumstances that it believes supports its request.

The commission also relocates the requirement that the transferee justify its choice of tariffs and the required explanations for affiliate transactions to this paragraph. This appropriately groups the explanation-based application requirements together. As discussed previously, the commission also modifies this paragraph to include a requirement that the transferee include an explanation for how granting the request for authorized acquisition rates would change the public interest analysis regarding the proposed acquisition, according to any applicable criteria listed in §24.239(h)(5). Finally, the commission modifies the rule to more specifically reflect that the public interest determination is made under §24.239 on the transaction as a whole, whereas the commission's review of the request for authorized acquisition rates is primarily focused on whether the requested rates are just and reasonable as applied to the customers of the acquired system.

Proposed §24.240(e) - Notice

Proposed §24.240(e) contains the notice requirements a transferee must meet, in addition to the notice requirements for applications filed under §24.239. Specifically, it requires the notice to include an explanation of how intervention differs from protesting a rate increase, a rate schedule showing the existing rates and the authorized acquisition rates, and a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

TAWC disagrees with proposed subsection (e) in its entirety. TAWC stated that the commission-approved notices for STM applications using TWC §13.3011 should only include the initial rates that the transferee is requesting to charge post-acquisition in addition to standard STM application notice requirements. TWU agreed with TAWC's comments and recommended the commission change the notice requirements to focus on providing customers with information about the requested initial rates in a form and manner that keeps it separate and distinct from the form and notice contents required for a rate case. TWU also recommended deleting paragraphs requiring information about the differences in intervening in and protesting a rate increase. TWU also included addition of a webpage address where a copy of the tariffs can be accessed by ratepayers.

#### Commission Response

The commission disagrees with TAWC's and TWU's comments about the contents of the notice. The requirement to provide an explanation of how intervening in an STM docket is different from protesting a rate increase is essential to ensure that an affected ratepayer understands the process before filing a motion to intervene.

The commission also disagrees with commenters that the notice should not provide information on the existing rates or comparisons between the existing and requested rates. The only reasoning provided by commenters in support of their position is that these notice requirements are too similar to the notice requirements for a rate case. While this is not a full rate case, ratepayers that are subject to a change in rates are entitled to fully understand the consequences of that rate change and be given an opportunity to make an informed decision on whether to intervene in the proceeding. Requiring the notice to include some information that is included in the notice requirements for

a rate case does not, as commenters seem to imply, violate the statutory prohibition on requiring a transferee to initiate a rate case to request authorized acquisition rates.

The new rule is adopted under TWC §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The new rule is also adopted under TWC §13.301 which governs the Sale, Merger, etc.; Investigation; Disallowance of Transaction and TWC §13.3011 that relates to Initial Rates for Certain Water or Sewer Systems after Purchase or Acquisition.

Cross Reference to Statute: Texas Water Code §§13.041, 13.301, and 13.3011.

§24.240. *Water and Sewer Utility Rates After Acquisition.*

(a) *Applicability.* This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011. For purposes of this section, the term "transaction" is used to align with its usage in the procedural provisions of §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).

(b) *Definitions.* In this section, the following definitions apply unless the context indicates otherwise.

(1) *Authorized acquisition rates--Initial rates* that are in force and shown in a tariff filed with a regulatory authority for the transferee for another water or sewer system owned by the transferee on the date an application is filed for the acquisition of a water or sewer system under §24.239 of this title.

(2) *Existing rates--Rates a transferor charged its customers* under a tariff filed with a regulatory authority prior to the water system or sewer system being acquired.

(3) *Initial rates--Rates charged by a transferee to the customers* of an acquired water or sewer system upon approval of the transaction by the commission. An initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.

(c) *Initial Rates.*

(1) A transferee must use existing rates as initial rates unless the commission authorizes, under this section or other applicable law, the use of different initial rates.

(2) A transferee may request commission approval to charge authorized acquisition rates to the customers of the water or sewer system for which the transferee seeks approval to acquire as part of an application filed in accordance with §24.239 of this title.

(3) If the transferee has in-force tariffs filed with multiple regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the same regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

(4) *Phased-in rates.* If the in-force tariff contains rates that are phased in over time, the provisions of this paragraph apply.

(A) Unless determined otherwise by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customers of the acquired water or sewer system. To moderate the effects of a rate increase on customers, the commission may approve authorized acquisition rates that start customers of the acquired water or sewer system on an earlier phase than is in place for the customers to which the tariff already applies or establish a different schedule for the effective period of each phase.

(B) The transferee's application must include financial projections, rate schedules, and billing comparisons, consistent with the requirements of subsection (d) of this section, for each phase in the in-force tariff.

(C) The commission's review of whether the authorized acquisition rates are just and reasonable under subsection (f) of this section will include an evaluation of whether the final phase of the requested rates are just and reasonable.

(5) *Public interest determination.* In determining whether to approve an acquisition under §24.239 of this title, the commission will consider whether approving the transferee's request to charge authorized acquisition rates under this section would change whether the proposed transaction would serve the public interest under §24.239(h)(5) of this title.

(d) *Application.* In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 proceeding must include the following:

(1) a rate schedule showing the existing rates and the requested authorized acquisition rates;

(2) financial projections including a comparison of expected revenues under the acquired water or sewer system's existing rates and the requested authorized acquisition rates;

(3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;

(4) documentation from the most recent base rate case in which the rates that the transferee is requesting to use as authorized acquisition rates were approved; this documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement for the requested rates and, if available online, may consist solely of a web address where the documentation can be located and the applicable docket number or any other information required to locate the documentation;

(5) a disclosure of whether the transferor and transferee are or have been affiliates in the five-year period before the proposed acquisition, and the nature of each applicable affiliate relationship;

(6) additional explanation, including any applicable documentation, supporting the request to charge authorized acquisition rates, including:

(A) that the requested authorized acquisition rates would be just and reasonable rates for the customers of the acquired system and for the transferee;

(B) how approving the requested rates would change how the commission should evaluate whether the proposed transaction would serve the public interest, according to any applicable criteria listed in §24.239(h)(5) of this title;

(C) if the transferee has multiple eligible in-force tariffs or rate schedules, a list of eligible tariffs or rate schedules and an explanation for the tariff or rate schedules the transferee proposes to use for authorized acquisition rates;

(D) if the transferor and transferee are affiliates or have been affiliates in the five-year period before the proposed acquisition, the application must also include an explanation for why the transferee is requesting to charge authorized acquisition rates instead of using other available ratemaking proceedings.

(e) *Notice requirements.* Unless the commission waives notice in accordance with other applicable law, a transferee requesting approval to charge authorized acquisition rates under this section must,

as part of the notice provided under §24.239 of this title, also provide notice of the information outlined in this subsection. Commission staff must incorporate this information into the notice provided to the transferee for distribution after the application is determined to be administratively complete.

(1) How intervention differs from protesting a rate increase.

(2) A rate schedule showing the existing rates and the authorized acquisition rates.

(3) A billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

(f) Commission review. The commission will, with or without a public hearing, investigate the request for authorized acquisition rates to determine whether the requested rates are just and reasonable for the acquired customers and the transferee. That a regulatory authority has determined that the requested rates are just and reasonable for a water or sewer system to which the rates already apply is not, in itself, sufficient to conclude that the requested rates are just and reasonable for the acquired water or sewer system.

(1) Public hearing. As part of its determination on whether to require a public hearing on the proposed transaction under §24.239(h) of this title, the commission will also consider whether a hearing is required to determine if the requested authorized acquisition rates are just and reasonable.

(A) If the commission requires a public hearing under this section or §24.239(h) of this title, the request to charge authorized acquisition rates will not be approved unless the commission determines that the requested rates are just and reasonable.

(B) If the commission does not require a public hearing under this section or §24.239(h) of this title, and the transferee has complied with the notice provisions of this section, the request to charge authorized acquisition rates will be approved in the commission's order approving the transaction. This subparagraph does not apply if the commission does not approve the transaction.

(2) Scope of rate review. The commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances, subject to the limitations of subparagraph (A) of this paragraph.

(A) The transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding, establishing the cost of service for the acquired water or sewer system, or establishing substantial similarity between the acquired water or sewer system and the water or sewer system to which the requested rates already apply. The transferee is also not required to defend the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.

(B) The commission may consider whether any charges or significant components of the requested authorized acquisition rates (e.g., local or system-specific charges, pass throughs, etc.) would be unjust or unreasonable if applied to the acquired water or sewer system. The commission may also consider evidence of whether the customers of the acquired water or sewer system are currently receiving continuous and adequate service. The commission may also consider evidence of whether the requested rates are generally consistent with the rates charged to similar water or sewer systems. The commission's review is not limited to the factors enumerated in this subparagraph.

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401255

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: April 10, 2024

Proposal publication date: September 29, 2023

For further information, please call: (512) 936-7322

◆ ◆ ◆  
**TITLE 22. EXAMINING BOARDS**

**PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY**

**CHAPTER 501. RULES OF PROFESSIONAL CONDUCT**

**SUBCHAPTER B. PROFESSIONAL STANDINGS**

**22 TAC §501.62**

The Texas State Board of Public Accountancy (Board) adopts an amendment to §501.62 concerning Other Professional Standards, without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 464) and will not be republished.

The Board attempts to identify, as much as possible, all professional standards that a CPA is expected to adhere to. Forensic services is a professional standard that has not previously been identified.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401246

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 10, 2024

Proposal publication date: February 2, 2024

For further information, please call: (512) 305-7842

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**CHAPTER 521. FEE SCHEDULE**

## 22 TAC §521.9

The Texas State Board of Public Accountancy (Board) adopts an amendment to §521.9 concerning Certificate Fee, without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 466) and will not be republished.

Individuals applying for their initial CPA license are assessed a fee to cover the administrative costs of processing an application. The rule amendment clarifies that the fee will not be refunded for any reason.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 and §901.655 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401247

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Effective date: April 10, 2024

Proposal publication date: February 2, 2024

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 51. EXECUTIVE SUBCHAPTER E. LEAVE POOLS

##### 31 TAC §51.143

The Texas Parks and Wildlife Commission in a duly notice meeting on January 25, 2024, adopted new 31 TAC §51.143, concerning Leave Pools, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7864). The rule will not be republished.

The most recent session of the Texas Legislature enacted Senate Bill 922, which amended Parks and Wildlife Code, Chapter 11, by adding new §11.0183, which requires the department to allow a peace officer commissioned by the department to voluntarily transfer up to eight hours of compensatory time or annual leave per year to a leave pool for use as leave for legislative activities conducted on behalf of a law enforcement association. Senate Bill 922 requires the commission to adopt rules and prescribe procedures relating to the operation of the legislative leave pool.

The new rule sets forth the purpose of the leave pool, designates a pool administrator, and requires the pool administrator, with the advice and consent of the executive director of the agency, to develop and implement operating procedures consistent with the requirements of the new rule and relevant law governing operation of the pool.

The department received two comments opposing adoption. Both commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule would require the department to hire additional employees to compensate for employees not available for scheduled duties. The department disagrees with the comment and responds that there is no scenario in which additional employees would be necessary to compensate for peace officers using the leave pool. No changes were made as a result of the comment.

One commenter opposed adoption and stated that S.B. 922 does not permit use of leave pool for activities on behalf of an association with fewer than 300 members. The department agrees and responds that the commission does not have the authority to modify or eliminate any provision of the statute. No changes were made as a result of the comment.

The department received one comment supporting adoption of the rule as proposed.

The new rule is adopted under the authority of Parks and Wildlife Code, §11.0183, which requires the commission to adopt rules to create and administer a peace officer legislative leave pool.

The adopted new rule affects Parks and Wildlife Code, Chapter 11.

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

Filed with the Office of the Secretary of State on March 21, 2024.

TRD-202401243

James Murphy

General Counsel

Texas Parks and Wildlife Department

Effective date: April 10, 2024

Proposal publication date: December 22, 2023

For further information, please call: (512) 389-4775



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

#### CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

The Texas Juvenile Justice Department (TJJD) adopts the repeals of §385.8101, Public Information Requests; §385.8117, Private Real Property Rights Affected by Governmental Action; §385.8136, Notices to Public and Private Schools; 385.8137, Media Access; §385.8141, Confidentiality; §385.8153, Research Projects; §385.8161, Notification of a Facility Opening



or Relocating; §385.8163, Decentralization; §385.9959, Transportation of Youth; §385.9967, Court-Ordered Child Support; and §385.9993, Canteen Operations, without changes as proposed in the September 29, 2023, issue of the *Texas Register* (48 TexReg 5644). The repeals will not be republished.

#### SUMMARY OF CHANGES

The repeals of these sections allow them to be recodified in TJJJ policies not contained in the Texas Administrative Code.

#### PUBLIC COMMENTS

TJJJ did not receive any public comments on the proposed rule-making action.

#### SUBCHAPTER B. INTERACTION WITH THE PUBLIC

**37 TAC §§385.8101, 385.8117, 385.8136, 385.8137, 385.8141, 385.8153, 385.8161, 385.8163**

#### STATUTORY AUTHORITY

The repeals are adopted under §2001.039, Government Code, which requires TJJJ to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these adopted repeals.

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

Filed with the Office of the Secretary of State on March 21, 2024.  
TRD-202401244

Jana L. Jones  
General Counsel  
Texas Juvenile Justice Department  
Effective date: July 1, 2024  
Proposal publication date: September 29, 2023  
For further information, please call: (512) 490-7278



#### SUBCHAPTER C. MISCELLANEOUS

**37 TAC §§385.9959, 385.9967, 385.9993**

#### STATUTORY AUTHORITY

The repeals are adopted under §2001.039, Government Code, which requires TJJJ to review its rules every four years and to determine whether the original reasons for adopting reviewed rules continue to exist.

No other statute, code, or article is affected by these adopted repeals.

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

Filed with the Office of the Secretary of State on March 21, 2024.  
TRD-202401245

Jana L. Jones  
General Counsel  
Texas Juvenile Justice Department  
Effective date: July 1, 2024  
Proposal publication date: September 29, 2023  
For further information, please call: (512) 490-7278





# 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.

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## Department of State Health Services

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 441, General Provisions and Title 25, Part 1, Chapter 448, Standard of Care, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 564, Chemical Dependency Treatment Facilities.

The rules will be transferred in the Texas Administrative Code effective April 30, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 441 and Chapter 448

TRD-202401264

## Health and Human Services Commission

### Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 441, General Provisions and Title 25, Part 1, Chapter 448, Standard of Care, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 564, Chemical Dependency Treatment Facilities.

The rules will be transferred in the Texas Administrative Code effective April 30, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 441 and Chapter 448

TRD-202401263

Figure: 25 TAC Chapter 441 and Chapter 448

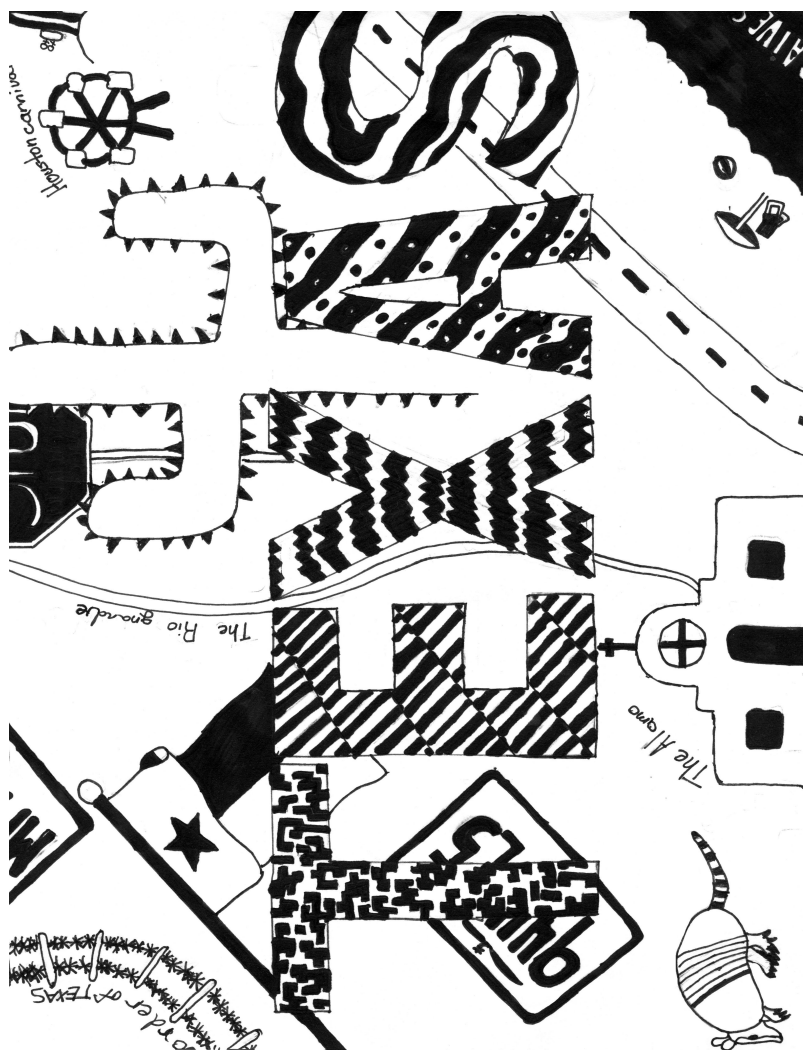
<b>Current Rules</b> <b>Title 25. Health Services</b> <b>Part 1. Department of State Health Services</b> <b>Chapter 441. General Provisions</b>	<b>Move to</b> <b>Title 26. Health and Human Services</b> <b>Part 1. Health and Human Services Commission</b> <b>Chapter 564. Chemical Dependency Treatment Facilities</b>
<b>Subchapter A. Definitions</b>	<b>Subchapter A. General Provisions</b>
§441.101. Definitions.	§564.1. Definitions.
<b>Current Rules</b> <b>Title 25. Health Services</b> <b>Part 1. Department of State Health Services</b> <b>Chapter 448. Standard of Care</b>	<b>Move to</b> <b>Title 26. Health and Human Services</b> <b>Part 1. Health and Human Services Commission</b> <b>Chapter 564. Chemical Dependency Treatment Facilities</b>
<b>Subchapter A. Definitions</b>	<b>Subchapter A. General Provisions</b>
§448.102. Purpose.	§564.2. Purpose.
§448.103. Scope of Rule.	§564.3. Scope of Rule.
<b>Subchapter B. Standard of Care</b> <b>Applicable to All Providers</b>	<b>Subchapter B. Standard of Care</b> <b>Applicable to All Providers</b>
§448.201. General Standard.	§564.4. General Standard.
§448.202. Scope of Practice.	§564.5. Scope of Practice.
§448.203. Competence and Due Care.	§564.6. Competence and Due Care.
§448.204. Appropriate Services.	§564.7. Appropriate Services.
§448.205. Accuracy.	§564.8. Accuracy.
§448.206. Documentation.	§564.9. Documentation.
§448.207. Discrimination.	§564.10. Discrimination.
§448.208. Access to Services.	§564.11. Access to Services.
§448.209. Location.	§564.12. Location.
§448.210. Confidentiality.	§564.13. Confidentiality.
§448.211. Environment.	§564.14. Environment.
§448.212. Communications.	§564.15. Communications.
§448.213. Exploitation.	§564.16. Exploitation.
§448.214. Duty to Report.	§564.17. Duty to Report.
§448.215. Impaired Providers.	§564.18. Impaired Providers.
§448.216. Ethics.	§564.19. Ethics.
§448.217. Specific Acts Prohibited.	§564.20. Specific Acts Prohibited.
§448.218. Standards of Conduct.	§564.21. Standards of Conduct.
<b>Subchapter D. Facility Licensure Information</b>	<b>Subchapter D. Facility Licensure Information</b>
§448.401. License Required.	§564.401. License Required.
§448.402. Variances.	§564.402. Variances.
§448.403. New Licensure Application.	§564.403. New Licensure Application.
§448.404. Licensure Renewal.	§564.404. Licensure Renewal.

§448.405. Changes in Status.	§564.405. Changes in Status.
§448.406. Inactive Status and Closure.	§564.406. Inactive Status and Closure.
§448.407. Licensure Inspection.	§564.407. Licensure Inspection.
§448.408. Licensure Fees.	§564.408. Licensure Fees.
§448.409. Action Against a License.	§564.409. Action Against a License.
<b>Subchapter E. Facility Requirements</b>	<b>Subchapter E. Facility Requirements</b>
§448.501. Facility Organization.	§564.501. Facility Organization.
§448.502. Operational Plan, Policies and Procedures.	§564.502. Operational Plan, Policies and Procedures.
§448.503. Reporting Measures.	§564.503. Reporting Measures.
§448.504. Quality Management.	§564.504. Quality Management.
§448.505. General Environment.	§564.505. General Environment.
§448.506. Required Postings.	§564.506. Required Postings.
§448.507. General Documentation Requirements.	§564.507. General Documentation Requirements.
§448.508. Client Records.	§564.508. Client Records.
§448.509. Incident Reporting.	§564.509. Incident Reporting.
§448.510. Client Transportation.	§564.510. Client Transportation.
<b>Subchapter F. Personnel Practices and Development</b>	<b>Subchapter F. Personnel Practices and Development</b>
§448.601. Hiring Practices.	§564.601. Hiring Practices.
§448.602. Students and Volunteers.	§564.602. Students and Volunteers.
§448.603. Training.	§564.603. Training.
<b>Subchapter G. Client Rights</b>	<b>Subchapter G. Client Rights</b>
§448.701. Client Bill of Rights.	§564.701. Client Bill of Rights.
§448.702. Client Grievances.	§564.702. Client Grievances.
§448.703. Abuse, Neglect, and Exploitation.	§564.703. Abuse, Neglect, and Exploitation.
§448.704. Program Rules.	§564.704. Program Rules.
§448.705. Client Labor and Interactions.	§564.705. Client Labor and Interactions.
§448.706. Restraint and Seclusion.	§564.706. Restraint and Seclusion.
§448.707. Responding to Emergencies.	§564.707. Responding to Emergencies.
§448.708. Searches.	§564.708. Searches.
<b>Subchapter H. Screening and Assessment</b>	<b>Subchapter H. Screening and Assessment</b>
§448.801. Screening.	§564.801. Screening.
§448.802. Admission Authorization and Consent to Treatment.	§564.802. Admission Authorization and Consent to Treatment.
§448.803. Assessment.	§564.803. Assessment.
§448.804. Treatment Planning, Implementation and Review.	§564.804. Treatment Planning, Implementation and Review.
§448.805. Discharge.	§564.805. Discharge.
<b>Subchapter I. Treatment Program Services</b>	<b>Subchapter I. Treatment Program Services</b>
§448.901. Requirements Applicable to All Treatment Services.	§564.901. Requirements Applicable to All Treatment Services.
§448.902. Requirements Applicable to Detoxification Services.	§564.902. Requirements Applicable to Detoxification Services.

§448.903. Requirements Applicable to Residential Services.	§564.903. Requirements Applicable to Residential Services.
§448.904. Requirements for Outpatient Treatment Programs.	§564.904. Requirements for Outpatient Treatment Programs.
§448.905. Additional Requirements for Adolescent Programs.	§564.905. Additional Requirements for Adolescent Programs.
§448.906. Access to Services for Co-Occurring Psychiatric and Substance Use Disorders (COPSD) Clients.	§564.906. Access to Services for Co-Occurring Psychiatric and Substance Use Disorders (COPSD) Clients.
§448.907. Additional Requirements for COPSD Programs.	§564.907. Additional Requirements for COPSD Programs.
§448.908. Specialty Competencies of Staff Providing Services to Clients with COPSD.	§564.908. Specialty Competencies of Staff Providing Services to Clients with COPSD.
§448.909. Treatment Planning of Services to Clients with COPSD.	§564.909. Treatment Planning of Services to Clients with COPSD.
§448.910. Treatment Services for Women and Children.	§564.910. Treatment Services for Women and Children.
§448.911. Treatment Services Provided by Electronic Means.	§564.911. Treatment Services Provided by Electronic Means.
§448.912. Miscellaneous Policies and Protocols.	§564.912. Miscellaneous Policies and Protocols.
<b>Subchapter J. Medication</b>	<b>Subchapter J. Medication</b>
§448.1001. General Provisions for Medication.	§564.1001. General Provisions for Medication.
§448.1002. Medication Storage.	§564.1002. Medication Storage.
§448.1003. Medication Inventory and Disposal.	§564.1003. Medication Inventory and Disposal.
§448.1004. Administration of Medication.	§564.1004. Administration of Medication.
<b>Subchapter K. Food and Nutrition</b>	<b>Subchapter K. Food and Nutrition</b>
§448.1101. Meals in Outpatient Programs.	§564.1101. Meals in Outpatient Programs.
§448.1102. Meals in Residential Programs.	§564.1102. Meals in Residential Programs.
§448.1103. Meals Prepared by Clients.	§564.1103. Meals Prepared by Clients.
§448.1104. Meals Provided by a Food Service.	§564.1104. Meals Provided by a Food Service.
<b>Subchapter L. Residential Physical Plant Requirements</b>	<b>Subchapter L. Residential Physical Plant Requirements</b>
§448.1201. General Physical Plant Provisions.	§564.1201. General Physical Plant Provisions.
§448.1202. Required Inspections.	§564.1202. Required Inspections.
§448.1203. Emergency Evacuation.	§564.1203. Emergency Evacuation.
§448.1204. Exits.	§564.1204. Exits.
§448.1205. Space, Furniture and Supplies.	§564.1205. Space, Furniture and Supplies.
§448.1206. Fire Systems.	§564.1206. Fire Systems.
§448.1207. Other Physical Plant Requirements.	§564.1207. Other Physical Plant Requirements.

<b>Subchapter M. Court Commitment Services</b>	<b>Subchapter M. Court Commitment Services</b>
§448.1301. Court Commitment Services.	§564.1301. Court Commitment Services.
<b>Subchapter N. Therapeutic Communities</b>	<b>Subchapter N. Therapeutic Communities</b>
§448.1401. Therapeutic Communities.	§564.1401. Therapeutic Communities.
<b>Subchapter O. Faith Based Chemical Dependency Programs</b>	<b>Subchapter O. Faith Based Chemical Dependency Programs</b>
§448.1501. Definitions.	§564.1501. Definitions.
§448.1502. Exemption for Faith-Based Programs.	§564.1502. Exemption for Faith-Based Programs.
§448.1503. Registration for Exempt Faith-Based Programs.	§564.1503. Registration for Exempt Faith-Based Programs.
§448.1504. Admission to Faith-Based Programs.	§564.1504. Admission to Faith-Based Programs.
§448.1505. Advertisement.	§564.1505. Advertisement.
§448.1506. Revocation of Exemption.	§564.1506. Revocation of Exemption.

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# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas Health and Human Services Commission

### Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 382, Women's Health Services

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 382, Women's Health Services, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 382" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401261

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: March 25, 2024



Texas Alcoholic Beverage Commission

### Title 16, Part 3

Pursuant to Texas Government Code §2001.039, the Texas Alcoholic Beverage Commission (TABC) will review its rules in Texas Administrative Code Chapter 33, Subchapters A and B (16 TAC §§33.1 - 33.29), relating to Licensing Applications, Fees and Payments. TABC will consider whether the reasons for initially adopting these rules continue to exist and determine whether these rules should be repealed, readopted, or readopted with amendments.

TABC will consider any written comments on the rule review that are received by TABC no later than 5:00 p.m., central time, on May 5, 2024. Send your comments to [rules@tabc.texas.gov](mailto:rules@tabc.texas.gov) or to the Office of General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

TRD-202401288

Matthew Cherry

Senior Counsel

Texas Alcoholic Beverage Commission

Filed: March 26, 2024



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 33, Early and Periodic Screening, Diagnosis, And Treatment

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 33, Early and Periodic Screening, Diagnosis, And Treatment, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [MCSRulesPublicComments@hhs.texas.gov](mailto:MCSRulesPublicComments@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 33" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401251

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 21, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 96, Bloodborne Pathogen Control

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 96, Bloodborne Pathogen Control, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HAITexas@dshs.texas.gov](mailto:HAITexas@dshs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 96" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401259

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 25, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services, proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 133, Hospital Licensing

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 133, Hospital Licensing, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [HHSRulesCoordinationOffice@hhs.texas.gov](mailto:HHSRulesCoordinationOffice@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 133" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401258

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 25, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 231, Requests for Information or Official Determination on Food Regulation

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 231, Requests for Information or Official Determination on Food Regulation, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [foods.regulatory@dshs.texas.gov](mailto:foods.regulatory@dshs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 231" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401254

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: March 21, 2024



Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for re adoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 261, Intermediate Care Facilities for Individuals with An Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 261, Intermediate Care Facilities for Individuals with An Intellectual Disability or Related Conditions (ICF/IID) Program--Contracting, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [ICFIID.Questions@hhsc.state.tx.us](mailto:ICFIID.Questions@hhsc.state.tx.us). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 261" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 26, Part 1, of the Texas Administrative Code or

on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401252

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: March 21, 2024



Department of Aging and Disability Services

### Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 6, ICF/ID Programs--Contracting

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 6, ICF/ID Programs--Contracting, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to mcsrulespubliccomments@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 6" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401300

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: March 27, 2024



The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Aging and Disability Services, proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 40, Part 1, of the Texas Administrative Code:

Chapter 41, Consumer Directed Services Option

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every

four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 41, Consumer Directed Services Option, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to CDS@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 41" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 40, Part 1, of the Texas Administrative Code on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401253

Jessica Miller

Director, Rules Coordination Office

Department of Aging and Disability Services

Filed: March 21, 2024



## Adopted Rule Reviews

Texas Health and Human Services Commission

### Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code:

Chapter 744, Minimum Standards for School-Age and Before or After-School Programs

Notice of the review of this chapter was published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 150). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 744 in accordance with §2001.039 of the Texas Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 744. Any amendments or repeals to Chapter 744 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 744 as required by the Texas Government Code §2001.039.

TRD-202401294

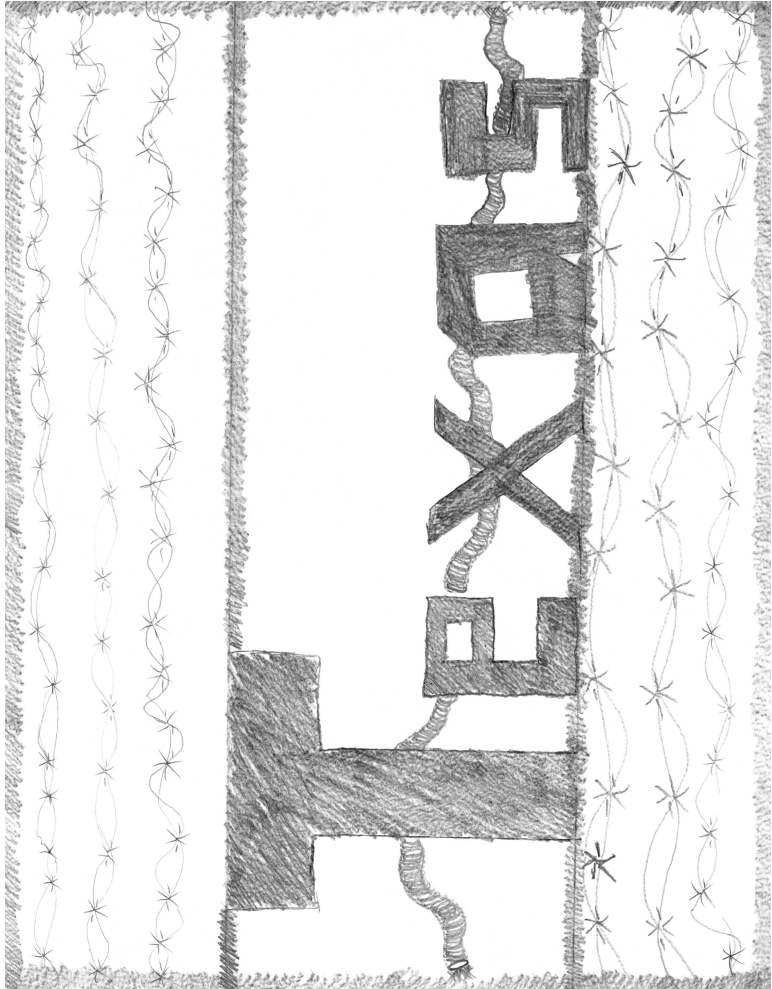
Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: March 27, 2024





# IN

# ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Alamo Area Metropolitan Planning Organization

Request for Proposals - NB Transit Connection Study

The Alamo Area Metropolitan Planning Organization (AAMPO) is seeking proposals from qualified firms to conduct and deliver the New Braunfels Transit Connection Study.

The Request for Proposals (RFP) may be obtained by downloading the RFP and attachments from AAMPO's website at [www.alamoareampo.org](http://www.alamoareampo.org) or calling Sonia Jiménez, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must email it by 12:00 p.m. (CDT), Friday, May 10, 2024 to the AAMPO office at [aampo@alamoareampo.org](mailto:aampo@alamoareampo.org).

Reimbursable funding for this study, in the amount of \$350,000, is contingent upon the availability of federal transportation planning funds.

TRD-202401238

Sonia Jiménez

Deputy Director

Alamo Area Metropolitan Planning Organization

Filed: March 20, 2024

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## Texas Alcoholic Beverage Commission

Annual Production Limit Order

**ADJUSTMENT OF PRODUCTION LIMITS  
PURSUANT TO ALCOHOLIC BEVERAGE  
CODE SECTION 62.122**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS ALCOHOLIC BEVERAGE  
COMMISSION**

**ANNUAL PRODUCTION LIMIT ORDER**

Alcoholic Beverage Code Section 62.122(f) requires the Texas Alcoholic Beverage Commission (Commission) to annually adjust the production limit prescribed by Subsection (c)(2) of the section in an amount that is equal to the percentage of the state's population growth for the previous year, as determined by the State Demographer.

According to the State Demographer, the population of the State of Texas grew by 1.6 percent from January 1, 2023, to December 31, 2023.

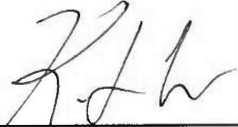
The annual production limit prescribed by Order of the Commission dated March 28, 2023, was 186,895 barrels. Applying the 1.6 percent 2023 population growth figure to the 186,895-barrel production limit set forth in the 2023 Commission Order equals 2,990 barrels.

IT IS THEREFORE ORDERED THAT THE ANNUAL PRODUCTION LIMIT FOR 2024 UNDER ALCOHOLIC BEVERAGE CODE SECTION 62.122(c)(2) IS 189,885 BARRELS.

ENTERED AND EFFECTIVE on this the 26 day of March, 2024.



TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

  
\_\_\_\_\_  
KEVIN J. LILLY  
PRESIDING OFFICER

TRD-202401286  
Matthew Cherry  
Senior Counsel  
Texas Alcoholic Beverage Commission  
Filed: March 26, 2024

◆ ◆ ◆  
**Office of the Attorney General**

Texas Water Code and Texas Health and Safety Code  
Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to

the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *Harris County, Texas, and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. S.K. and Brothers, Inc., Trey Melcher and Yvonne Evie Melcher, Trustees of the Evie Melcher Non-Exempt Trust, Melcher Investments, Bill E. Lewis and Richard L. Kerr, Jr., Co-Trustees of the Lucile Birmingham Melcher Management Trust and the Leroy Melcher Marital Deduction Trust, and former Co-Trustees of the Evie Melcher Non-Exempt Trust*; Cause No. 2011-52524, in the 215th Judicial District, Harris County, Texas.

Nature of the Suit: River Oaks Cleaners is a dry cleaning business in Harris County operated by S.K. and Brothers, Inc. (ROC Defendants) and located on real property owned by Trey Melcher and Yvonne Evie Melcher, Trustees of the Evie Melcher Non-Exempt Trust, Melcher Investments, and Bill E. Lewis and Richard L. Kerr, Jr., Co-Trustees of the Lucile Birmingham Melcher Management Trust and the Leroy Melcher Marital Deduction Trust, and former Co-Trustees of the Evie Melcher Non-Exempt Trust (collectively, Melcher Defendants). Harris County initiated suit against ROC and Melcher Defendants alleging violations of Texas statutes and rules resulting from discharges of pollutants, including perchloroethylene (PERC), from the River Oaks Cleaners that contaminated groundwater and/or soil in and under the dry cleaner and surrounding properties. The State of Texas, on behalf of the Texas Commission on Environmental Quality (TCEQ), joined the suit as a necessary and indispensable party.

Proposed Settlement: The proposed Agreed Final Judgment includes injunctive relief that orders Defendants to conduct an affected property assessment of the site in accordance with the requirements of Subchapter C of Chapter 350 of Title 30 of the Texas Administrative Code (Texas Risk Reduction Program) and to submit an Affected Property Assessment Report to TCEQ. If the report reveals contamination above protective concentration levels, and TCEQ determines that the contamination is attributable to the River Oaks Cleaners, Defendants will be required to submit a Remedial Action Plan to TCEQ and remediate the Site in accordance with the approved plan. The proposed settlement also assesses civil penalties in the amount of \$100,000 against ROC Defendants and civil penalties in the amount of \$93,000 against Melcher Defendants. The State will receive one-half of all civil penalties awarded in the judgment, totaling \$96,500, in accordance with Tex. Water Code § 7.107. Harris County will receive the remaining \$96,500 in civil penalties. In addition to civil penalties, the proposed settlement awards \$28,500 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Erin K. Snody, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, phone (512) 475-4161, facsimile (512) 320-0911, or email: erin.snody@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202401241  
Justin Gordon  
General Counsel  
Office of the Attorney General  
Filed: March 21, 2024

◆ ◆ ◆  
**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 04/01/24 - 04/07/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/01/24 - 04/07/24 is 18.00% for commercial<sup>2</sup> credit.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202401293  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: March 27, 2024

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the 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 **May 6, 2024**. 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 **May 6, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: AUSTIN PICK A PART AUTO SALVAGE INCORPORATED; DOCKET NUMBER: 2024-0336-WQ-E; IDENTIFIER: RN111806311; LOCATION: Cedar Creek, Bastrop County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for stormwater discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: Buckeye Texas Processing LLC; DOCKET NUMBER: 2021-1128-AIR-E; IDENTIFIER: RN106620438; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 111.111(a)(4)(A)(ii), 116.115(c), and 122.143(4), 40 Code of Federal Regulations §60.18(f)(1), New Source Review (NSR) Permit Numbers 109923, PSDTX1502, and GHGPSDTX159, Special Conditions (SC) Number 15.C., Federal Operating Permit (FOP) Number O3869, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 1.A. and 13, and Texas Health and Safety Code (THSC), §382.085(b), by failing to conduct daily visible emissions observations of the flares; 30 TAC §§101.20(3), 116.115(b)(2)(E)(i) and (c), and 122.143(4), NSR Permit Number 109923, SC Number 18.C., NSR Permit Numbers 109923, PSDTX1502, and GHGPSDTX159, SC Number 18.C., FOP Number O3869, GTC and STC Number 13, and THSC, §382.085(b), by failing to maintain records containing the information and data sufficient to demonstrate compliance with the permit; 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 109923, PSDTX1502, and GHGPSDTX159, SC Number 26, FOP Number O3869, GTC and STC Number 12, and THSC, §382.085(b), by failing to conduct monthly sampling of the inlet wastewater stream for total volatile organic compounds; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 109923, PSDTX1502, and GHGPSDTX159, SC Number 35, FOP Number O3869, GTC and STC Number 12, and THSC, §382.085(b), by failing to maintain records for the daily vacuum truck loading and unloading; PENALTY: \$18,576; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(3) COMPANY: City of Buffalo; DOCKET NUMBER: 2022-0488-MWD-E; IDENTIFIER: RN101917540; LOCATION: Buffalo, Leon County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010022001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$5,625; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$4,500; ENFORCEMENT COORDINATOR: Samantha Smith, (512) 239-2099; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Munday; DOCKET NUMBER: 2022-1080-PWS-E; IDENTIFIER: RN101268829; LOCATION: Munday, Knox County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(2), by failing to institute special precautions as described in the flowchart found in 30 TAC §290.47(e) in the event of low distribution pressure and water outages; PENALTY: \$840; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 881-6991; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(5) COMPANY: City of Quinlan; DOCKET NUMBER: 2019-1762-MWD-E; IDENTIFIER: RN101917565; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d) and §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013725001, Other Requirements Number 1, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Class C license or higher; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0013725001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0013725001,

Operational Requirements Number 1, by failing to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0013725001, Monitoring and Reporting Requirements Number 7.c, by failing to report to the TCEQ in writing, any effluent violation which deviates from the permitted effluent limitation by more than 40% within five working days of becoming aware of noncompliance; and 30 TAC §305.125(1) and §319.11(d) and TPDES Permit Number WQ0013725001, Monitoring and Reporting Requirements Number 2.a, by failing to comply with flow measurements, equipment, installation, and procedures that conform to those prescribed in the Water Measurement Manual, published by the United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the Executive Director; PENALTY: \$31,874; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$25,500; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(6) COMPANY: City of Richardson; DOCKET NUMBER: 2023-1029-PST-E; IDENTIFIER: RN102039112; LOCATION: Richardson, Dallas 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 tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Ramya Wendt, (512) 239-2513; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: Creek Water Utility LLC and Susan Janet Baker dba Creek Water Utility LLC; DOCKET NUMBER: 2022-0609-PWS-E; IDENTIFIER: RN101240125; LOCATION: Jefferson, Marion County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(j), by failing to use an approved chemical or media for the treatment of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.45(b)(1)(C)(i) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane; 30 TAC §290.45(b)(1)(C)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's 20,000-gallon ground storage tank annually; and 30 TAC §290.121(a) and (b), by failing to 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 monitoring requirements; PENALTY: \$13,292; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: DIV HTR KERRVILLE LLC; DOCKET NUMBER: 2024-0338-WR-E; IDENTIFIER: RN111504494; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; RE-



REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: DSM Nutritional Products, LLC; DOCKET NUMBER: 2023-0102-AIR-E; IDENTIFIER: RN101190221; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: medicinal chemicals and botanical products manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 19797, Special Conditions Number 1, Federal Operating Permit Number O3943, General Terms and Conditions and Special Terms and Conditions Number 11, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$12,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Kali Investments LLC dba Valley Ridge Beverage; DOCKET NUMBER: 2022-1251-PST-E; IDENTIFIER: RN101746725; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Danielle Fishbeck, (512) 239-5083; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Lajitas Municipal Services Company LLC; DOCKET NUMBER: 2022-1033-PWS-E; IDENTIFIER: RN104359112; LOCATION: Lajitas, Brewster County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(e)(4)(B) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of an operator who holds an applicable, valid Class C or higher groundwater license issued by the executive director (ED); 30 TAC §290.46(f)(2) and (3)(A)(ii)(II), by failing to maintain water works operation and maintenance records and make them readily available for review by the ED during the investigation; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; and 30 TAC §290.46(n)(2), by failing to make available an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: LATITUDE LIQUIDS LLC; DOCKET NUMBER: 2023-0516-IHW-E; IDENTIFIER: RN111622247; LOCATION: Shamrock, Wheeler County; TYPE OF FACILITY: unauthorized municipal hazardous waste (MHW) storage and disposal site; RULE VIOLATED: 30 TAC §335.2(a) and (b), by failing to not cause, suffer, allow, or permit the unauthorized storage and disposal of MHW; PENALTY: \$31,500; ENFORCEMENT COORDINATOR: Carolyn Kent, (512) 239-2536; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Northshore; DOCKET NUMBER: 2022-0900-PWS-E; IDENTIFIER: RN105715007; LOCATION: Flower Mound, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(j), by failing to use an approved chemical or media for the disinfection of potable water that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for Drinking Water Treatment Chemicals; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), and (ii)(III), (iv), and (B)(iii), by failing to maintain water works operation and maintenance records

and make them readily available for review by the Executive Director upon request; 30 TAC §290.46(m)(1)(A), by failing to inspect the facility's two ground storage tanks annually; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's two pressure tanks annually; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; PENALTY: \$2,480; ENFORCEMENT COORDINATOR: Samantha Salas, (512) 239-1543; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: Pilot Texas West LLC; DOCKET NUMBER: 2022-1669-PWS-E; IDENTIFIER: RN110599305; LOCATION: Monahans, Ward County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and THSC, §341.031(a), by failing to comply with the acute maximum contaminant level of ten milligrams per liter for nitrate; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Emerson Rinewalt, (512) 239-1131; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(15) COMPANY: R&D Terrell Properties LLC; DOCKET NUMBER: 2022-1703-PWS-E; IDENTIFIER: RN101249852; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter (mg/L) for arsenic and 4.0 mg/L for fluoride based on a running annual average; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: R. L. JONES, LP; DOCKET NUMBER: 2024-0023-WR-E; IDENTIFIER: RN111730974; LOCATION: Harper, Gillespie County; TYPE OF FACILITY: land; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.096 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: REED, CODY L; DOCKET NUMBER: 2024-0273-OSI-E; IDENTIFIER: RN108623596; LOCATION: Rising Star, Eastland County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: REICH ENTERPRISES INCORPORATED; DOCKET NUMBER: 2024-0160-WQ-E; IDENTIFIER: RN111842514; LOCATION: Hallsville, Harrison County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: South Texas Electric Cooperative, Incorporated; DOCKET NUMBER: 2024-0430-AIR-E; IDENTIFIER: RN106534407; LOCATION: Edinburg, Hidalgo County; TYPE OF FACILITY: 215 megawatt electric generating plant; RULES VIOLATED: 30 TAC §§116.110(a), 116.315(a), and 122.143(4), Federal Operating Permit Number O3810, General Terms and Conditions, and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by

failing to submit an application for renewal at least six months prior to the expiration of the permit; PENALTY: \$15,300; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: TEXAS SOUTHERN DRILLING LLC; DOCKET NUMBER: 2024-0063-WR-E; IDENTIFIER: RN111794939; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: operator; RULE VIOLATED: TWC, §11.053, by failing to prevent any unauthorized diversions or use of state water where water diversion curtailments/suspensions have been ordered by the Executive Director; PENALTY: \$420; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: Utilities Investment Company, Incorporated; DOCKET NUMBER: 2023-1628-PWS-E; IDENTIFIER: RN107693087; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the Executive Director and receive approval prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Number 2; 30 TAC §290.41(c)(3)(K), by failing to provide a well casing vent for Well Number 1 that is covered with 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 §290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence or well house around each water treatment plant, well unit, potable water storage tank, pressure maintenance facility, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.43(c)(3), by failing to provide an overflow discharge opening on the ground storage tank at the Montebello Plant with a gravity-hinged and weighted cover that closes automatically and fits tightly with no gap over 1/16 inch, and an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps that have a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide an elevated storage capacity of 100 gallons per connection; 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 and free of excessive solids; and 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; PENALTY: \$16,456; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

TRD-202401275

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 26, 2024



## Enforcement Orders

An agreed order was adopted regarding City of Benjamin, Docket No. 2022-0435-PWS-E on March 26, 2024, assessing \$5,885 in administrative penalties with \$1,177 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Caston, 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 Arimak Water Supply Corporation (Arimak), Docket No. 2022-0552-PWS-E on March 26, 2024, assessing \$812 in administrative penalties with \$162 deferred. Information concerning any aspect of this order may be obtained by contacting Tayler McKenzie, 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 E S Water Utility Consolidators INC, Docket No. 2022-0593-PWS-E on March 26, 2024, assessing \$210 in administrative penalties with \$42 deferred. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez Scott, 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 NIVEDITA LLC dba Handy Foods, Docket No. 2022-0954-PST-E on March 26, 2024, assessing \$3,375 in administrative penalties with \$675 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, 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 PINCO INC. dba Thelma Food Store, Docket No. 2022-0982-PST-E on March 26, 2024, assessing \$3,600 in administrative penalties with \$720 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, 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 STUDY BUTTE WATER SUPPLY CORPORATION, Docket No. 2022-1002-PWS-E on March 26, 2024, assessing \$225 in administrative penalties with \$45 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, 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 Christopher Castillo, Sr., Docket No. 2023-0691-OSI-E on March 26, 2024, assessing \$450 in administrative penalties with \$90 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, 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 FIVE RIVERS INC. dba Graham Food Mart, Docket No. 2023-0888-PST-E on March 26, 2024, assessing \$3,493 in administrative penalties with \$698 deferred. Information concerning any aspect of this order may be obtained by contacting Jalan Jefferson, 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 A RAHMAN HOLDINGS, LLC, Docket No. 2023-0982-PST-E on March 26, 2024, assessing \$2,998 in administrative penalties with \$599 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401301

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



### Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175361

**APPLICATION.** Ingram Readymix No. 1, LLC, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 175361 to authorize the operation of a concrete batch plant with enhanced controls. The facility is proposed to be located at 933 Oil Center Drive, Abilene, Taylor County, Texas 79601. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. 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. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-99.654203,32.436403&level=13>. This application was submitted to the TCEQ on February 12, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 13, 2024.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Monday, May 20, 2024, at 6:00 p.m.**

**MCM Elegante, Embassy Room**

**4250 Ridgemont Drive**

**Abilene, Texas 79606**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Abilene Regional Office, located at 1977 Industrial Boulevard, Abilene, Texas 79602-7833, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need 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 Ingram Readymix No. 1, LLC, 3580 Farm-to-Market Road 482, New Braunfels, Texas 78132-5012, or by calling Mr. Gary Johnson, Vice President at (830) 625-9156.

Notice Issuance Date: March 21, 2024

TRD-202401295

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



### Notice of District Petition

Notice issued March 20, 2024

TCEQ Internal Control No. D-10112023-016; 45 HC Harmony Hill, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Lakesong Municipal Management District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59, Article III, Section 52 and Article III, Section 52-a of the Texas Constitution, Chapter 49 of the Texas Water Code and Chapter 375 of the Texas Local Government Code, as amended; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ.

The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 61.31 acres located within Ellis County, Texas; and (4) the land within the proposed District is wholly within the corporate limits of City of Grand Prairie, Texas.

By Resolution No. 5369 - 2023, passed and approved on September 19, 2023, the City of Grand Prairie, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the work proposed to be done by the District at the present time is to purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; to collect, transport, process, dispose of and control domestic, and commercial wastes; to gather, conduct, divert, abate, amend and

control local storm water or other local harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$5,850,000 (\$3,500,000 for water, wastewater, and drainage plus \$2,350,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401296

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



#### Notice of District Petition

Notice issued March 25, 2024

TCEQ Internal Control No. D-01222024-026 Window 75 Invesco, LLC, a Texas limited liability company, Tag Devco, Inc., a Texas corporation, and Rosemary Laubach (collectively, the "Petitioners") filed

a petition (petition) for the creation of West Comal County Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) Window 75 Invesco, LLC represents there is one lienholder, International Bank of Commerce, on the land owned by Window 75 Invesco, LLC, and the aforementioned entity has consented to the creation of the District. Tag Devco, Inc, represents there are two lienholders, International Bank of Commerce and Window 75 Invesco, LLC, on the land owned by Tag Devco, Inc., and the aforementioned entities have consented to the creation of the District. Rosemary Laubach represents there are no lienholders on the land owned by Rosemary Laubach. All (petitioners) land to be included in the proposed District; (3) the proposed District will contain approximately 154.374 acres of land located within Comal County, Texas; and (4) the land to be included within the proposed district is located within the extraterritorial jurisdiction of the City of Bulverde, Texas (City). The petition further states that the work to be done by the proposed District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$32,600,000 (\$21,900,000 for water, wastewater, and drainage and \$10,700,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and

will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401297

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



### Notice of District Petition

Notice issued March 27, 2024

TCEQ Internal Control No. D-02122024-014; SV2 Liberty, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 56 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 478.023 acres located primarily within Williamson County, Texas and a portion of the proposed District is located within Burnet County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses and operational expenses during construction and interest during construction; (3) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational facilities for the inhabitants of the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with the purpose for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$29,870,000 (\$14,870,000 for water and drainage and \$15,000,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401298

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



### Notice of District Petition

Notice issued March 27, 2024

TCEQ Internal Control No. D-02122024-014; SV2 Liberty, LLC, a Texas limited liability company (Petitioner) filed a petition for creation of Williamson County Municipal Utility District No. 56 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 478.023 acres located primarily within Williamson County, Texas and a portion of the proposed District is located within Burnet County, Texas; and (4) none of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city. The petition further states that the proposed District will purchase, construct, acquire, repair, extend and improve land, easements, works, improvements, facilities, plants, equipment, and appliances necessary to: (1) provide a water supply for municipal uses, domestic uses, and commercial purposes; (2) gather, conduct, divert, and control local storm water or other local harmful excesses of water in the proposed District and the payment of organization expenses and operational expenses during construction and interest during construction; (3) purchase, construct, acquire, provide, operate, maintain, repair, improve, extend and develop park and recreational fa-

cilities for the inhabitants of the proposed District; (4) design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads, or improvements in aid of those roads; and (5) provide such other facilities, systems, plants, and enterprises as shall be consonant with the purpose for which the proposed District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$29,870,000 (\$14,870,000 for water and drainage and \$15,000,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401282

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024



#### Notice of Opportunity to Comment on an Agreed Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Order (AO) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AO, the commission shall allow the public an opportunity to submit written comments on the proposed AO. TWC, §7.075, requires that notice of the opportunity to comment must be published in

the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 6, 2024**. 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 the proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 6, 2024**. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Patty M. Steed dba Canyon Dam Mobile Home Park; DOCKET NUMBER: 2023-0443-UTL-E; TCEQ ID NUMBER: RN102676681; LOCATION: 6706 North Dixie Boulevard, Odessa, Ector County; TYPE OF FACILITY: retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer and is not located in a county with a population of 3.3 million or more or in a county with a population of 550,000 or more adjacent to a county with a population of 3.3 million or more; RULE VIOLATED: TWC, §13.1394(b)(2), by failing to adopt and submit to the TCEQ for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations; PENALTY: \$625; STAFF ATTORNEY: Misty James, Litigation, MC 175, (512) 239-0631; REGIONAL OFFICE: Midland Regional Office, 9900 West Interstate Highway 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

TRD-202401282

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: March 26, 2024



Notice of Public Hearing on Assessment of Administrative Penalties and Requiring Certain Actions of Slott Construction Company, Inc. SOAH Docket No. 582-24-14286 TCEQ Docket No. 2022-0287-WQ-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 via Zoom videoconference:

10:00 a.m. - April 25, 2024

To join the Zoom meeting via computer or smart device:

<https://soah-texas.zoomgov.com>

**Meeting ID:** 161 984 0712

**Password:** TCEQDC1

or

To join the Zoom meeting via telephone dial:

+1 (669) 254-5252

**Meeting ID:** 161 984 0712

**Password:** 5247869

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 8, 2024 concerning assessing administrative penalties against and requiring certain actions of SLOTT CONSTRUCTION COMPANY, INC., for violations in Walker County, Texas, of: Tex. Water Code § 26.121(a), 30 Texas Administrative Code §305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR15210K, Part III, Section F.6(a), (c), and (d).

The hearing will allow SLOTT CONSTRUCTION COMPANY, INC., 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 SLOTT CONSTRUCTION COMPANY, INC., 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 SLOTT CONSTRUCTION COMPANY, INC. 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.** SLOTT CONSTRUCTION COMPANY, INC., 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 and 30 Texas Administrative Code chs. 70 and 305; 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 Texas Administrative Code §70.108 and §70.109 and ch. 80, and 1 Texas Administrative Code ch. 155.

Further information regarding this hearing may be obtained by contacting Taylor Pack Ellis, 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 Sheldon Wayne, Staff Attorney, Office of 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 [www.tceq.texas.gov/goto/efilings](http://www.tceq.texas.gov/goto/efilings) or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.**

**In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the**

**public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH."**

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: March 26, 2024

TRD-202401302

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 27, 2024

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 18, 2024 to March 22, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, March 29, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday April 28, 2024.

Federal License and Permit Activities:

**Applicant:** Coastal Bend Bays & Estuaries Program

**Location:** The project site is located in the Laguna Madre, at Benny's Shack Rookery Island approximately 4.5 miles southeast of Port Mansfield, Willacy County, Texas and approximately 0.2 mile west of the Gulf Intercoastal Waterway.

**Latitude and Longitude:** 26.490251, -97.387526

**Project Description:** The applicant proposes to expand Benny's Shack Rookery Island (the Island) by placing approximately 2.36 acres of fill material (24,480 cubic yards [CY]) northward of the Island. This fill material will come from a dedicated 138.38-acre borrow area approximately 1,300 feet northwest of the Island (approximately 263.490398, -97.392913). Material will be extracted through a combination of hydraulic and mechanical dredging. In addition, the project would place approximately 1.34 acres of fill material (6,543 CY) for the construction of an approximately 1,939-foot-long traditional riprap breakwater for shoreline stabilization. The breakwater would be approximately 5 feet wide at the top of the crest and would have an average width of 30 feet at the base. In total, the project would fill approximately 3.70 acres of shallow open water and approximately 0.0007 acre (30.5 square feet) of submerged aquatic vegetation.

The applicant has stated that they have avoided and minimized the environmental impacts by placing the majority of the breakwater outside of submerged aquatic vegetation areas and avoiding all oyster beds and wetlands located on the Island. In addition, the breakwater would be

constructed first and will act as a containment berm for the Island fill material. No mitigation is proposed.

**Type of Application:** U.S. Army Corps of Engineers permit application # SWG-2023-00653. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1188-F1

**Applicant:** Calhoun County Precinct 3

**Location:** The project site is located in Carancahua Bay, approximately 725 feet southeast of the intersection of County Road 307 and Curlew Street, in Port Alto, Calhoun County, Texas.

**Latitude and Longitude:** 28.665367, -96.407617

**Project Description:** The applicant is proposing to perform maintenance dredging of 8,700 cubic yards of sediment from an existing recreational boat canal, to excavate 1,200 cubic yards of sediment from the existing recreational boat canal for the purpose of constructing two new circulation channels to provide tidal exchange from the marsh complex to the canal, to place 40,000 cubic yards of beach quality sand for the purpose of restoring 1,750 feet of shoreline along Carancahua Bay, and to discharge 7,100 cubic yards of breakwater material that will be used to construct three offshore breakwaters in Carancahua Bay and to extend an existing riprap groin. Permanent impacts to approximately 0.29 acre of estuarine emergent wetlands will occur as a result of dredging/excavation activities.

The applicant stated they will avoid impacts to fringe wetlands by implementing appropriate best management practices during project activities and the applicant will avoid impacts to oyster beds by implementing the proposed Aquatic Resources Relocation Plan. The proposed project will result in the restoration of up to 1.8 acres of estuarine emergent wetlands within the enclosed wetland complex and is expected to provide approximately 0.32 acre of low-lying area, adjacent to the marsh, creating an environment conducive to spartina growth. Therefore, the applicant is not proposing mitigation.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2012-00493. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1192-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202401289

Mark Havens

Chief Clerk

General Land Office

Filed: March 26, 2024

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**Texas Health and Human Services Commission**

## Notice of Public Hearing on Long-Range Planning for State Supported Living Centers

**Hearing Site.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 8, 2024, at 1:00 p.m. in the Winters Building, Room 125W, 701 W. 51st St., Austin, Texas 78751. Building entry and check-in is through security at the main entrance, and parking is available in the visitor's lot located in front of the building.

**Purpose.** The purpose of the hearing is to receive public comment on the long-range planning for State Supported Living Centers including resident quality of care, services to transition back to the community, and availability of services as required by 533A.032.

### Agenda.

1. Welcome and call to order
2. Long-Range Plan
3. Public comment
4. Adjourn

**Oral Comments.** Oral comments can be provided in person or via video or audio conferencing. Please pre-register.

**Written Comments.** Written comments may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, or email:

### U.S. Mail

Texas Health and Human Services Commission

State Supported Living Centers

Attention: Office of Laura Cazabon-Braly, Mail Code E619

Winters Building

701 W. 51st St.

Austin, Texas 78751

### Overnight mail, special delivery mail, or hand delivery

Texas Health and Human Services Commission

State Supported Living Centers

Attention: Office of Laura Cazabon-Braly, Mail Code E619

Winters Building

701 W. 51st St.

Austin, Texas 78751

### Email

[SSLCPanning@hhsc.state.tx.us](mailto:SSLCPanning@hhsc.state.tx.us)

*This meeting is open to the public. No reservations are required, and there is no cost to attend this meeting.*

*People with disabilities who wish to attend the meeting and require auxiliary aids or services should contact Lisa Colin at (737) 306-9085 at least 72 hours before the meeting so appropriate arrangements can be made.*

TRD-202401242

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 21, 2024



Notice of Public Hearing on the Proposed Interim Reimbursement Rates for Small and Large State-Operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) for Fiscal Year 2024

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments on the proposed interim payment rates for small and large state-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IIDs) for Fiscal Year 2024. The hearing will occur on April 29, 2024, at 9:00 a.m. Central Daylight Time (CDT), in the HHSC North Austin Complex Building, Public Hearing Room 1.401, 4601 W. Guadalupe St. Austin, Texas, 78751.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

<https://attendee.gotowebinar.com/register/6639895083090518357>

Webinar ID: 719-140-579

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing in by phone will be provided after you register.

HHSC will also broadcast the public hearing; the broadcast can be accessed on this webpage: <https://hhs.texas.gov/about-hhs/communications-events/live-archived-meetings>. The broadcast will be archived and accessible on demand on the same website. The hearing will be held in compliance hearings on proposed Medicaid reimbursements.

Proposal. HHSC proposes the following interim per diem reimbursement rates for small and large state-operated ICF/IIDs, effective retroactively to September 1, 2023:

Bond Homes - Medicaid-only clients:

Proposed interim daily rate: \$919.74

Large State-Operated ICF/IIDs - Medicaid-only clients:

Proposed interim daily rate: \$1,305.78

Large State-Operated ICF/IIDs - Dual-eligible Medicaid/Medicare clients:

Proposed interim daily rate: \$1,256.51

HHSC is proposing these interim rates to ensure there are adequate funds to serve the individuals in these facilities. The proposed interim

rates account for actual and projected increases in costs to operate these facilities.

Methodology and Justification. The proposed payment rates were determined in accordance with Title 1 of the Texas Administrative Code Section 355.456, which addresses the reimbursement methodology for ICF/IID.

Briefing Package. A briefing package describing the proposed payment rates will be available on the Provider Finance webpage (<https://pfd.hhs.texas.gov/rate-packets>) no later than April 10, 2024. Interested parties may obtain a copy of the briefing package before the hearing by contacting the HHSC Provider Finance Department by telephone at (737) 867-7817; fax at (512) 730-7475; or email at [PFD-LTSS@hhs.texas.gov](mailto:PFD-LTSS@hhs.texas.gov). The briefing package will also be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted instead of, or in addition to, oral testimony until 5:00 p.m. on the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance Department, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by email to [PFD-LTSS@hhs.texas.gov](mailto:PFD-LTSS@hhs.texas.gov). In addition, written comments may be sent by overnight mail or hand delivered to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 W. Guadalupe St., Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact HHSC Provider Finance by calling (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202401265

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: March 25, 2024

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

During the first half of February 2024, the Department of State Health Services (Department) has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables (in alphabetical order by location). The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX [Texas]" indicates that the radioactive material may be used on a temporary basis at locations throughout the state.

In issuing new licenses and amending and renewing existing licenses, the Department's Radiation Section has determined that the applicant has complied with the licensing requirements in Title 25 Texas Administrative Code (TAC), Chapter 289, for the noted action. In granting termination of licenses, the Department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In granting exemptions to the licensing requirements of Chapter 289, the Department has determined that the exemption is not prohibited by law and will not result in a significant risk to public health and safety and the environment.

A person affected by the actions published in this notice may request a hearing within 30 days of the publication date. A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. 25 TAC §289.205(b)(15); Health and Safety Code §401.003(15). Requests must be made in writing and should contain the words "hearing request," the name and address of the person affected by the agency action, the name and license number of the entity that is the subject of the hearing request, a brief statement of how the person is affected by the action what the requestor seeks as the outcome of the hearing, and the name and address of the attorney if the requestor is represented by an attorney. Send hearing requests by mail to: Hearing Request, Radioactive Material Licensing, MC 2835, PO Box 149347, Austin, Texas 78714-9347, or by fax to: (512) 206-3760, or by e-mail to: RAMlicensing@dshs.texas.gov.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
ALVIN	EQUISTAR CHEMICALS LP	L03363	ALVIN	34	02/13/24
ANGLETON	ISOTHERAPEUTICS GROUP LLC	L05969	ANGLETON	52	02/12/24
AUSTIN	UROLOGY AUSTIN PLLC	L06798	AUSTIN	03	02/07/24
AUSTIN	CARDINAL HEALTH 414 LLC DBA CARDINAL HEALTH NUCLEAR PHARMACY SERVICES	L02117	AUSTIN	101	02/14/24
AUSTIN	ST DAVIDS HEALTHCARE PARTNERSHIP LP LLP DBA ST DAVIDS MEDICAL CENTER	L00740	AUSTIN	184	02/07/24
AUSTIN	AUSTIN RADIOLOGICAL ASSOCIATION	L00545	AUSTIN	252	02/13/24
BAYTOWN	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L00962	BAYTOWN	59	02/05/24
BAYTOWN	SAN JACINTO METHODIST HOSPITAL DBA HOUSTON METHODIST BAYTOWN HOSPITAL	L02388	BAYTOWN	85	02/13/24
BEAUMONT	BASF CORPORATION	L02016	BEAUMONT	38	02/06/24
BRYAN	NDE SOLUTIONS LLC	L05879	BRYAN	43	02/05/24
CYPRESS	CARDIOVASCULAR HEALTHCARE ASSOCIATE PA	L07084	CYPRESS	01	02/02/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

DALLAS	TEXAS ONCOLOGY PA	L07148	DALLAS	01	02/14/24
DALLAS	CARDIOLOGY SPECIALISTS OF NORTH TEXAS PLLC DBA NORTH TEXAS HEART CENTER	L06941	DALLAS	03	02/09/24
DALLAS	HEARTPLACE PLLC	L04607	DALLAS	81	02/05/24
DALLAS	THE UNIVERSITY OF TEXAS SOUTHWESTERN MEDICAL CENTER AT DALLAS	L00384	DALLAS	144	02/09/24
DENTON	NUMED INC	L02129	DENTON	85	02/06/24
DENTON	NUMED INC	L02129	DENTON	85	02/06/24
EL PASO	BHS PHYSICIANS NETWORK INC DBA EL PASO HEART CENTER	L06893	EL PASO	09	02/02/24
EL PASO	BHS PHYSICIANS NETWORK INC DBA CENTER OF THE HEART - A PROVIDENCE MEDICAL PARTNERS PRACTICE	L05695	EL PASO	13	02/13/24
EL PASO	TENET HOSPITALS LIMITED THE HOSPITALS OF PROVIDENCE MEMORIAL CAMPUS	L02353	EL PASO	155	02/09/24
FORT WORTH	TEXAS HEALTH PHYSICIANS GROUP DBA TEXAS HEALTH HEART AND VASCULAR SPECIALISTS	L06468	FORT WORTH	11	02/09/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

GALVESTON	THE UNIVERSITY OF TEXAS MEDICAL BRANCH OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY	L01299	GALVESTON	122	02/05/24
GALVESTON	THE UNIVERSITY OF TEXAS MEDICAL BRANCH OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY	L01299	GALVESTON	123	02/09/24
GRAPEVINE	BAYLOR REGIONAL MEDICAL CENTER AT GRAPEVINE DBA BAYLOR SCOTT & WHITE MEDICAL CENTER GRAPEVINE	L03320	GRAPEVINE	47	02/09/24
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WEST HOSPITAL	L06358	HOUSTON	19	02/13/24
HOUSTON	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST WILLOWBROOK HOSPITAL	L05472	HOUSTON	75	02/13/24
HOUSTON	HARRIS COUNTY HOSPITAL DISTRICT DBA HARRIS HEALTH SYSTEM	L01303	HOUSTON	111	02/13/24
HOUSTON	BAYLOR COLLEGE OF MEDICINE	L00680	HOUSTON	133	02/12/24
HOUSTON	HALLIBURTON ENERGY SERVICES INC	L00442	HOUSTON	150	02/06/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

HOUSTON	AMERICAN DIAGNOSTIC TECH LLC	L05514	HOUSTON	167	02/09/24
HOUSTON	THE UNIVERSITY OF TEXAS MD ANDERSON CANCER CENTER	L00466	HOUSTON	189	02/14/24
IRVING	COLUMBIA MEDICAL CENTER OF LAS COLINAS INC DBA MEDICAL CITY LAS COLINAS	L05084	IRVING	28	02/09/24
IRVING	BAYLOR MEDICAL CENTER AT IRVING DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - IRVING	L02444	IRVING	129	02/09/24
KATY	MEMORIAL CITY CARDIOLOGY ASSOCIATES DBA KATY CARDIOLOGY ASSOCIATES	L05713	KATY	26	02/05/24
LEAGUE CITY	SUNTRAC SERVICES INC	L03062	LEAGUE CITY	37	02/06/24
LUBBOCK	WEST TEXAS HEART & VASCULAR PLLC	L06783	LUBBOCK	06	02/09/24
MANSFIELD	HEALTHSCAN IMAGING LLC	L06856	MANSFIELD	26	02/09/24
MARBLE FALLS	SCOTT & WHITE HOSPITAL - MARBLE FALLS DBA BAYLOR SCOTT & WHITE MEDICAL CENTER - MARBLE FALLS	L06722	MARBLE FALLS	10	02/07/24
MARSHALL	CHRISTUS GOOD SHEHERD MEDICAL CENTER	L02572	MARSHALL	48	02/06/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

MARSHALL	CHRISTUS GOOD SHEPHERD MEDICAL CENTER	L02572	MARSHALL	48	02/06/24
NASSAU BAY	HOUSTON METHODIST ST JOHN HOSPITAL DBA HOUSTON METHODIST CLEAR LAKE HOSPITAL	L06650	NASSAU BAY	12	02/13/24
SAN ANTONIO	TEXAS ONCOLOGY PA	L06759	SAN ANTONIO	13	02/12/24
SAN ANTONIO	UNIVERSITY OF TX HEALTH SCIENCE AT SA	L01279	SAN ANTONIO	181	02/14/24
SAN ANTONIO	SOUTH TEXAS RADIOLOGY IMAGING CENTERS	L00325	SAN ANTONIO	265	02/13/24
SAN MARCOS	CHRISTUS SANTA ROSA HEALTH CARE CORPORATION DBA CHRISTUS SANTA ROSA HOSPITAL - SAN MARCOS	L07081	SAN MARCOS	05	02/09/24
STINTON	STEEL DYNAMICS SOUTHWEST LLC	L07106	STINTON	02	02/06/24
STINTON	STEEL DYNAMICS SOUTHWEST LLC	L07106	STINTON	03	02/06/24
SUGAR LAND	TEXAS THYROID & ENDOCRINE CENTER PA	L06245	SUGAR LAND	03	02/06/24
SUGAR LAND	METHODIST HEALTH CENTERS DBA HOUSTON METHODIST SUGAR LAND HOSPITAL	L05788	SUGAR LAND	58	02/13/24
SWEENEY	CHEVRON PHILLIPS CHEMICAL COMPANY LP	L06771	SWEENEY	05	02/08/24

AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THE WOODLANDS	ST LUKES COMMUNITY HEALTH SERVICES DBA ST LUKES THE WOODLANDS HOSPITAL	L06370	THE WOODLANDS	14	02/13/24
THE WOODLANDS	METHODIST HEALTH CENTER HOUSTON METHODIST THE WOODLANDS HOSPITAL	L06861	THE WOODLANDS	20	02/13/24
THROUGHOUT TX	GLOBE ENGINEERS INC	L05527	DALLAS	09	02/01/24
THROUGHOUT TX	PROBE TECHNOLOGY SERVICES INC	L05112	FORT WORTH	43	02/09/24
THROUGHOUT TX	PROFESSIONAL SERVICE INDUSTRIES INC	L06332	GARLAND	19	02/07/24
THROUGHOUT TX	GAMMATECH INDUSTRIAL LLC	L07177	HOUSTON	03	02/08/24
THROUGHOUT TX	HOUSTON NDT SERVICES LLC DBA HOUSTON INSPECTION SERVICES	L06920	HOUSTON	05	02/06/24
THROUGHOUT TX	INTERTEK ASSET INTEGRITY MANAGEMENT INC	L06801	HOUSTON	24	02/08/24
THROUGHOUT TX	HVJ ASSOCIATES INC	L03813	HOUSTON	74	02/01/24
THROUGHOUT TX	CARDINAL HEALTH 414 LLC	L01911	HOUSTON	173	02/09/24
THROUGHOUT TX	PRIME INSPECTIONS INC	L07122	KATY	04	02/08/24
THROUGHOUT TX	CUTTER TECHNICAL SERVICES LLC	L07052	KILGORE	04	02/09/24



AMENDMENTS TO EXISTING LICENSES ISSUED:(continued)

THROUGHOUT TX	DIAMOND TECHNICAL SERVICES INC	L07206	LA PORTE	01	02/08/24
THROUGHOUT TX	DIAMOND TECHNICAL SERVICES INC	L07206	LA PORTE	02	02/08/24
THROUGHOUT TX	VEGA AMERICAS INC	L07113	LEAGUE CITY	02	02/14/24
THROUGHOUT TX	WELD SPEC INC	L05426	LUMBERTON	124	02/15/24
THROUGHOUT TX	SCHLUMBERGER TECHNOLOGY CORPORATION	L01833	SUGAR LAND	228	02/05/24
THROUGHOUT TX	LUDLUM MEASUREMENTS INC	L01963	SWEETWATER	118	02/15/24
THROUGHOUT TX	WICHITA FALLS CONSTRUCTION MATERIALS TESTING LLC	L07159	WICHITA FALLS	02	02/07/24
VICTORIA	CITIZENS MEDICAL CENTER	L00283	VICTORIA	112	02/13/24
WACO	TEXAS ONCOLOGY PA	L05940	WACO	23	02/07/24
WEBSTER	CHCA CLEAR LAKE LP DBA HCA HOUSTON HEALTHCARE CLEAR LAKE	L01680	WEBSTER	114	02/09/24

RENEWAL OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
HOUSTON	MICHELE P SARTORI MD	L06591	HOUSTON	01	02/05/24
HOUSTON	MEMORIAL HERMANN HEALTH SYSTEM DBA MEMORIAL HERMANN TEXAS MEDICAL CENTER	L04655	HOUSTON	61	02/13/24
MESQUITE	TEXAS ONCOLOGY PA	L05741	MESQUITE	21	02/13/24
MIDLAND	MIDLAND CARDIAC CLINIC	L05571	MIDLAND	13	02/07/24

TERMINATIONS OF LICENSES ISSUED:

Location of Use/Possession of Material	Name of Licensed Entity	License Number	City of Licensed Entity	Amendment Number	Date of Action
THROUGHOUT TX	ADVANCED INSPECTION TECHNOLOGIES LLC	L06608	PORT NECHES	17	02/13/24

TRD-202401303  
Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Filed: March 27, 2024

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**Public Utility Commission of Texas**

**Notice of Application to Relinquish Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on March 21, 2024, to relinquish designation as an eligible telecommunications carrier and eligible telecommunications provider under 16 Texas Administrative Code §26.417 and §26.418.

Docket Title and Number: Application of DialToneServices, LP to Relinquish its Designation as an Eligible Telecommunications Provider and an Eligible Telecommunications Carrier in 121 Wire Centers Served By Verizon, Docket Number 56395.

The Application: DialToneServices, LP requests to partially relinquish its designations as an eligible telecommunications provider (ETP) and as an eligible telecommunications carrier (ETC) in certain area served by Verizon aka Frontier, to be effective July 1, 2024. The areas in which DialToneServices seeks to partially relinquish its ETP and ETC designations are described in exhibit A to the application.

Persons who wish to file a motion to intervene or comments on the application should contact the commission as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56395.

TRD-202401256  
Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: March 22, 2024

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**Texas Water Development Board**

## Request for Applications Statewide Water Awareness Campaign

The Texas Water Development Board (TWDB) requests applications leading to the possible award of a contract to develop and execute a statewide water awareness campaign in Texas. TWDB plans to award up to \$10 million in grants, comprised of up to \$2 million per year for a maximum of five years, from funds appropriated to the Texas Water Fund by the 88th Texas Legislature and approved by Texas voters in November 2023.

To be eligible for funding under this grant, an applicant must be a governmental entity or nonprofit organization with an existing or proposed statewide Texas water awareness program or campaign.

### Summary of the Request for Applications

Due Date (Closing): April 17, 2024, at 3:00 p.m. CST

Deadline For Questions: April 1, 2024, at 3:00 p.m. CST

TWDB Response to Questions: April 9, 2024

Anticipated Award Date: June 13, 2024

Estimated Total Funding: \$10 million (up to \$2 million per year for a maximum of five years)

Local Match Requirement: N/A

### Scope of Project

An applicant awarded funding must ensure that the water awareness campaign takes into account differences in water needs of various geographic regions of the state; attitudes toward water issues; potential barriers to achieving the campaign goals; and how these factors may shape the messaging and complement and support existing local and regional water education or awareness programs. To receive consideration, campaigns must meet the eligibility criteria and aim to achieve the following goals:

- 1) Increase public awareness and education regarding Texas water resources
- 2) Connect with Texans through strategic, integrated communication methods
- 3) Drive specified behavioral changes through clear calls to action
- 4) Meet campaign goals per established metrics and measures of success

The grant recipient will be required to complete the following tasks:

A. Develop, execute, and manage the statewide water awareness campaign, including the following:

1. Develop through interactions with TWDB, research, focus groups, and/or other methods:
  - a. the specific primary and secondary awareness goals and the associated behavioral changes sought through the campaign. The TWDB will provide final approval of proposed goals, calls to action, and behavioral changes;
  - b. the barriers to and public appeals most likely to lead to successful calls to action to create the sought-after behavioral changes. This work could include developing a market research plan and performing data collection on public behaviors, attitudes, and perceptions; evaluation of the data; and reporting on results. Data collected may include, for example, key demographic and psychographic characteristics of the target market. All research data produced will be made publicly available.

2. Develop potential campaign messages and strategies based on the goals and research in Task A and collaborate with TWDB to determine final campaign messaging and strategy. This work will require presenting potential options to TWDB and reworking campaign messaging and/or approaches based on agency feedback. It may also include considering how to incorporate TWDB data visualization and other TWDB information into the campaign strategy.

3. Develop and manage implementation of strategic plans, timelines, media plans and placements, and creative assets including, but not limited to, logos, fonts, multimedia, graphics, etc.

4. Manage the procurement of and/or partnership with any subcontractors and other campaign partners, if any.

5. Identify metrics for measurement and set and monitor measurable, time-based goals at specific intervals to demonstrate success and impact of the campaign.

6. Make future adjustments to the campaign, with TWDB input and approval based on the measurements taken at the scheduled intervals.

B. Submit contractually agreed-upon deliverables, including but not limited to: research, campaign messaging, creative assets, strategic plans and timelines, quarterly progress reports with metrics, and annual reports throughout the duration of funding.

Applicants should have experience in the following areas:

A. Managing timelines, budget, and creative development and deployment of assets for a public awareness campaign.

B. Identifying, setting, and tracking relevant metrics of success for a public awareness campaign.

C. Working/partnering with entities such as Texas communities, water providers, media, creative agencies, and other organizations to further the mission and goals of a public awareness campaign.

### How to Apply

Applicants must submit all information listed below, in the order given, as the response to this RFA. The response will only be considered if all items are submitted as required. Incomplete or late responses to this RFA will not be considered.

Item 1: Organization profile summary and history. Include the following (*5 pages maximum*):

- a. Organization name, address, phone number, website, and legal status
- b. Name and title of person submitting the response with the authority to bind the organization.
- c. Name, phone number, and email address of contact person for any questions about the response.
- d. Describe the general nature of the organization, the number of years in business, size, and scope of operation.

Item 2: Qualifications and experience. Include the following (*5 pages maximum*):

- a. Qualifications for managing a statewide water awareness campaign, such as
  - i. Experience with such tasks as those outlined in Task A, items 1-6, above.
  - ii. Experience managing timelines, budget, and creative development and deployment of assets for a public awareness campaign.
  - iii. Experience identifying, setting, and tracking relevant metrics of success for a public awareness campaign.

iv. Experience working/partnering with entities such as Texas communities, water providers, media, creative agencies, and other organizations to further the mission and goals of a public awareness campaign.

b. Bio(s) of person(s) who will manage and support the campaign. Also indicate who the lead individual(s) will be throughout the first two years.

Item 3: Proposed campaign information:

a. Describe the need for funding to meet the goals of this RFA. Include proposed partners and/or subcontractors, if relevant.

b. Explain how you will use the funding to develop and execute the public awareness messaging and campaign.

c. Provide a proposed timeline for achieving the campaign goals with a focus on tasks occurring during the first two years.

Item 4: Project budget. (*Note: Payment will be made on a cost reimbursement basis.*)

a. Total project budget.

i. Prepare a draft budget for the project that identifies the proposed project costs by task and category and year, if applicable. (See example budgets below.)

ii. Specify any other sources of funding to supplement and sustain this campaign.

Item 5: (IF APPLICABLE) Supplemental information about applicant's existing statewide awareness program or campaign. Include the following (*5 pages maximum*):

a. Goals, audience, key messaging, and desired behavioral changes.

b. Examples of strategies and tactics.

c. Metrics and documented program success rate.

Applications must be submitted electronically to [Bidroom@twdb.texas.gov](mailto:Bidroom@twdb.texas.gov) with a copy to Veronica Holmes, [veronica.holmes@twdb.texas.gov](mailto:veronica.holmes@twdb.texas.gov), by the Closing date of April 17, 2024, at 3:00 p.m. CST.

Please include the subject line of "**Public Awareness Campaign RFA.**"

Questions regarding the application may be submitted to: [Bidroom@twdb.texas.gov](mailto:Bidroom@twdb.texas.gov), and a copy to Veronica Holmes, [veronica.holmes@twdb.texas.gov](mailto:veronica.holmes@twdb.texas.gov), and must be received by the Deadline for Questions, April 1, 2024, at 3:00 p.m. CST.

#### **Limitations on Use of Funds**

Eligible costs are those directly attributed to the Project, including management, planning, creative development, and implementation. Indirect expenses such as the applicant's overhead are not eligible for reimbursement. Eligible travel expenses of a grant recipient and any subcontractors are limited to the maximum amounts authorized for state employees by the General Appropriations Act. Respondents are responsible for all costs incurred in the preparation and delivery of the application to TWDB.

Grant funds may not be used to support or pay the costs of lobbying; any portion of the salary or any other compensation for an elected government official; the purchase or lease of vehicles; the purchase of recreational activities; the purchase of promotional items, unless specifically approved in writing by TWDB; costs of travel that are unrelated to the direct delivery of services that support the grant; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles.

#### **Evaluation Criteria and Selection Process**

Incomplete applications and those that do not meet the requirements of the application instructions may be eliminated from consideration.

Applications will be scored by a review panel according to the criteria and submission requirements outlined in the application instructions. Additional consideration will be given to those who have experience developing, managing, or facilitating a statewide awareness campaign and to those who have relevant experience in water issues. Top scoring applicants will be invited to present to the Board during a public work session on May 22, 2024. Those applicants will be notified approximately one week in advance. At a separate Board meeting open to the public, the Board will consider approving the Executive Administrator's request to initiate and enter into a contract with one selected applicant.

TWDB reserves the right to reject all proposals and make no awards under this announcement. In addition, TWDB reserves the right to partially fund proposals by funding discrete activities, portions, or phases of a proposed project. Board approval will be required for each annual renewal to approve funding following the first year.

#### **Negotiations with Selected Applicant**

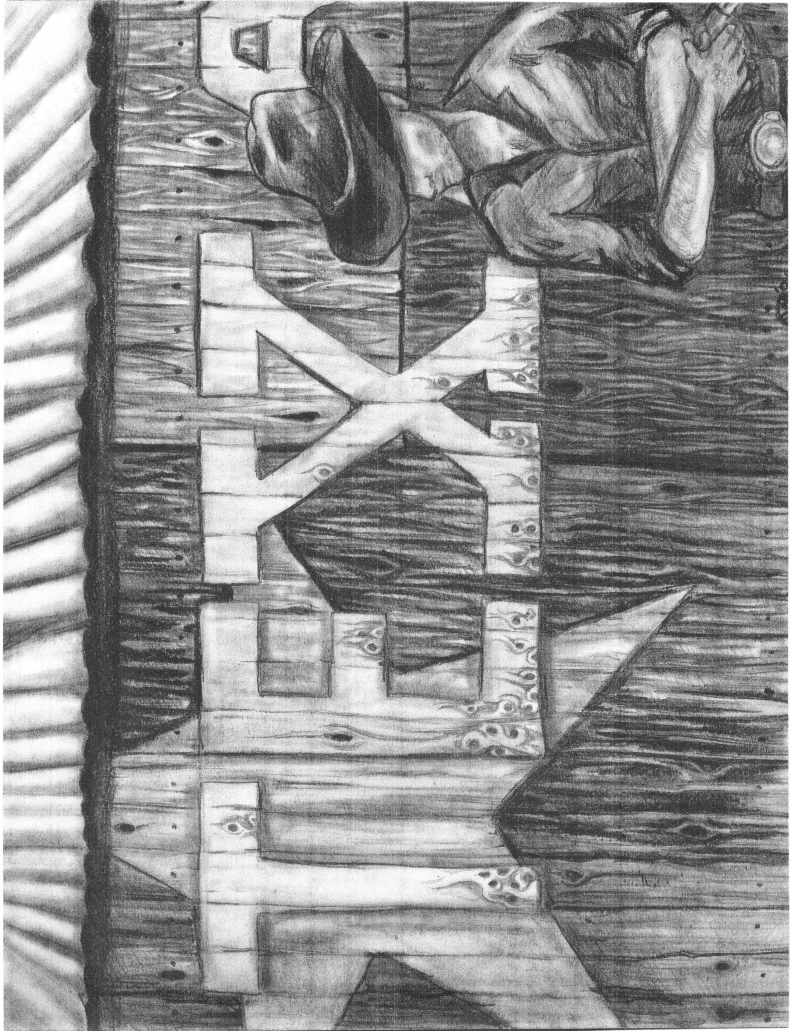
The applicable scope of work, deliverables, timeline, budget, and contract terms will be negotiated after TWDB awards the selected applicant. Failure to arrive at mutually agreeable terms of a contract with a selected applicant will constitute a rejection of the grant award and may result in funding being awarded to another applicant.

**CRITERIA**

<b>Points</b>	<b>Criteria</b>
0-25	Experience managing timelines, budget, and creative development and deployment of assets for a public awareness campaign or program.
0-5	Experience developing, managing, or facilitating a successful <i>statewide</i> public awareness campaign.
0-15	Experience identifying, setting, and tracking relevant metrics of success for a public awareness campaign or program.
0-20	Experience working/partnering with entities such as Texas communities, water providers, media, creative agencies, and other organizations to further the mission and goals of a public awareness campaign or program.
0-5	Relevant experience in Texas water issues.
0-20	Proposed campaign development plan and timeline.
0-10	Ability to financially supplement and sustain the statewide water campaign.
<b>Maximum points possible = 100</b>	

TRD-202401240  
 Hannah Mulla  
 Contract Administration Manager  
 Texas Water Development Board  
 Filed: March 21, 2024





## 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 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

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 “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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