

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 65. LANDOWNER COMPENSATION PROGRAM

The Office of the Attorney General (OAG) adopts new Chapter 65 in Title 1 of the Texas Administrative Code (TAC), relating to the Landowner Compensation Program. These new rules are adopted with changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 821). The new rules will be republished. The changes are in response to public comments.

The adopted rule implements Chapter 56C, Texas Code of Criminal Procedure, enacted as Senate Bill 1133, which requires the OAG to implement the Landowner Compensation Program.

Chapter 65 consists of Subchapter A, §§65.1 and §65.2, Scope, Construction, and Definitions; Subchapter B, §§65.200 - 65.203, Program Guidelines; Subchapter C, §§65.300 - 65.307, Application for Compensation; and Subchapter D, §§65.400 - 65.402, Administrative Remedies. Chapter 65 is necessary to implement the Landowner Compensation Program in Chapter 56C, Texas Code of Criminal Procedure.

EXPLANATION OF AND JUSTIFICATION RULES

The Legislature, in the 88th Regular Session (2023), added Chapter 56C to the Code of Criminal Procedure (S.B. 1133) which establishes the Landowner Compensation Program (LCP). The purpose of the LCP is to compensate certain landowners who suffer real property damage on agricultural land as a result of certain acts in connection with a border crime.

Senate Bill 1133 provides that the OAG shall establish: eligibility for compensation, application procedures, criteria for evaluating applications and awarding compensation, guidelines for compensation amounts not to exceed \$75,000 per incident, and procedures for monitoring the use of awarded compensation.

Chapter 65 is necessary to implement Chapter 56C and Contingency Rider Section 18.03, General Appropriations Act (GAA) for Fiscal Years 2024-2025, which appropriates funds to create and administer the LCP. Chapter 56C, Code of Criminal Procedure, as added by S.B.1133 will expire on the second anniversary of the date that the money appropriated for the LCP has been expended.

SECTION-BY-SECTION SUMMARY

Adopted new Chapter 65 adds new Subchapter A - Scope, Construction, and Definitions.

Adopted new §65.1, outlines the authority, scope, and construction of the rules and law establishing the LCP.

Adopted new §65.2, defines the following terms: "Agricultural land," "Agricultural use," "Application," "Border crime," "Claimant," "Closed application," "Collateral source," "Incident," "Landowner," "Law enforcement agency," "LCP," "OAG," "Real property," "Report," and "Trespasser."

Adopted new Chapter 65 adds new Subchapter B - Program Guidelines.

Adopted new §65.200 outlines claimant eligibility requirements, the administration of the program, and compensation and award limits. The eligibility requirements are consistent with Chapter 56C and require that a claimant submit an application in accordance with adopted new Chapter 65. Adopted new §65.200 also establishes that real property damage for which an applicant files a claim must have occurred on or after September 1, 2023.

Adopted new §65.201 establishes that the OAG may award compensation to claimants that the OAG determines have met all eligibility requirements outlined in §65.200. Adopted new §65.201 also establishes parameters the OAG may use to determine the amount of compensation that will be awarded to a claimant who the OAG determines is eligible to receive compensation under the LCP.

Adopted new §65.202 establishes the types of real property repairs for which the OAG may award compensation and how the rates will be set, published, and reviewed. New §65.202 also establishes a maximum compensation amount of \$75,000, which is consistent with Chapter 56C, and states that applications for \$15 or less will not be considered.

Adopted new §65.203, establishes procedures that the OAG may use to monitor a landowner's use of compensation awarded under the LCP.

Adopted new Chapter 65 adds new Subchapter C - Application for Compensation.

Adopted new §65.300 establishes the application requirements a claimant must meet to be eligible for compensation under the LCP.

Adopted new §65.301 states that claimants must submit applications for compensation no later than 90 days after the date the incident occurred. The OAG has the discretion to extend the time frame for filing an application.

Adopted new §65.302, requires the claimant report an incident to the appropriate state or local law enforcement agency within a reasonable time period as determined by the OAG.

Adopted new §65.303 outlines when an application may be denied or closed. The OAG may reopen an application that has been closed. The OAG may reconsider an application that

has been denied. A claimant may not reapply for compensation based on the same incident for which a previous application has been denied.

Adopted new §65.304 establishes that the OAG is the payer of last resort pursuant to §56C.006 of the Code of Criminal Procedure. Adopted new §65.304 provides that the OAG will not award compensation where another collateral source is or was available to compensate the landowner for real property damage and failed to seek reimbursement for the available collateral source. Adopted new §65.304 also establishes that the OAG may consider the availability of collateral sources to determine, award, deny, or reduce compensation.

Adopted new §65.305 establishes that the OAG may require a refund from a claimant if the claimant applied for compensation on the basis of fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation. The OAG may also pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

Adopted new §65.306 provides that the OAG will not exceed the amount of money appropriated for compensation under the LCP and available funds will be awarded in a priority deemed appropriate by the OAG.

Adopted new §65.307 provides that the OAG has authority to transmit the submission of notices, forms, and other documentation electronically and also may require a claimant to do so, unless good cause is shown.

Adopted new Chapter 65 adds new Subchapter D - Administrative Remedies.

Adopted new §65.400 outlines procedures to request a reconsideration of an application or award under the LCP.

Adopted new §65.401 outlines the prehearing conference requirements.

Adopted new §65.402 outlines the hearing procedures.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Mr. Ryan Fisher, Chief of the Crime Victim Services Division, has determined that for each year of the first five years the adopted rules are in effect, there will be an anticipated additional cost to the state General Revenue Funds, estimated at \$18,000,000 for the first fiscal year and \$18,000,000 for the second fiscal year.

The additional cost to the state was considered in the fiscal note for S.B. 1133, which amended the Texas Code of Criminal Procedure by adding Chapter 56C. Senate Bill 1133 grants the OAG the ability to adopt rules, establish, and administer the Landowner Compensation Program.

The General Appropriations Act for Fiscal Year 2024-2025 appropriated \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount to implement S.B. 1133. Because the LCP is a new program, an accurate forecast of compensation payouts and operating costs is not possible.

Chapter 56C of the Code of Criminal Procedure, as added by S.B. 1133, will expire on the second anniversary of the date the money appropriated for the Landowner Compensation Program has been expended.

Mr. Fisher has determined that there will be no additional costs to local government, no estimated reductions in costs to state or local government, and no estimated increase in revenue or estimated losses in revenue to state or local government.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Fisher has determined that the adopted rules do not have an impact on local employment or economies because the adopted rules impact landowners. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Fisher has determined that for each year of the first five-year period the adopted rules are in effect, the public benefit will be to the landowners who have suffered real property damage on agricultural land as a result of certain acts in connection with a border crime. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. The compensation will allow for financial recovery for damage caused by trespassing on agricultural land or related to border crimes if compensation from other collateral sources is not available to the landowner.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Fisher has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. Senate Bill 1133 amended the Texas Code of Criminal Procedure adding Chapter 56C, which establishes the Landowner Compensation Program, to assist those affected by border crime on agricultural land to be eligible to receive compensation for real property damage. Those identified as affected by the proposed rules are potential claimants who may be eligible for compensation. Enforcing or administering the proposed rules do not have foreseeable economic costs to those claimants.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

Mr. Fisher has determined that for each year of the first five-year period the adopted rules are in effect, there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the adopted rules.

Since the adopted rules 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.

GOVERNMENT GROWTH IMPACT STATEMENT

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

1. Adopted new chapter 65 creates a new government program. Senate Bill 1133 creates a government program called Landowner Compensation Program and appropriates General Revenue Funds to the OAG for two years to administer the program.

2. Implementation of adopted new chapter 65 requires the OAG to create 10 new full-time employee positions. The adopted rules are necessary to implement S.B. 1133, which resulted in the creation of a new program for which implementation requires additional staff in the Crime Victims Services Division.

3. Implementation of the adopted rules does not require an increase or decrease in future legislative appropriations to the agency. The adopted rules implement General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program. The appropriated amount for the program is \$18 million per fiscal year for two years, totaling \$36 million, with administrative costs of \$342,617 per year included in the amount. Chapter 56C, Code of Criminal Procedure, as added by S.B. 1133 will expire on the second anniversary of the date that the money appropriated for the Landowner Compensation Program has been expended. Unless continued by the Texas Legislature and funded through the General Appropriations Act, the adopted rules do not increase or decrease future legislative appropriations.

4. The adopted rules will not require an increase or decrease in fees paid to the agency.

5. The adopted rules will not create a new regulation.

6. The adopted rules will not expand, limit, or repeal an existing regulation.

7. The adopted rules increase the number of individuals subject to the rules' applicability. The adopted rules implement S.B. 1133 which creates a new Landowner Compensation Program and therefore increases the number of individuals that may be eligible to be claimants.

8. The adopted rules positively affect this state's economy. Senate Bill 1133 allows landowners who have suffered real property damage on agricultural land as a result of certain acts in connection with a border crime to be awarded compensation. Eligible claimants will receive compensation, an award amount of up to \$75,000 per incident, for their losses. This will allow for a quicker financial recovery for damage caused by trespassing on agricultural land or related to border crimes.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the adopted rules and the adopted rules do 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 adopted rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

The OAG received comments on the proposed rule from: Albert Hausser, Texas Farm Bureau, Texas & Southwestern Cattle Raisers Association (TSCRA), and the South Texas Property Rights Association (STPRA).

Comments regarding impact statements.

STPRA comments on OAG's estimate that there will be no additional costs to local governments, stating that the need for written reports by law enforcement agencies will add time and travel to make investigations for the reports and may lead to added landowner liaison positions at law enforcement agencies. STPRA comments on OAG's estimate that there will be no im-

pact to local economies, noting that landowner compensation to landowners may positively affect the local economy.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rules because the law and the rules do not add any new requirement to law enforcement when crimes occur or are reported. How a local law enforcement agency chooses to investigate, document, and write incident reports now for reported crimes will not change as a result of the law or the proposed rules. In addition, although compensation to landowners may positively affect the local economy, at this time, any positive fiscal impact is speculative so OAG declines to make changes to the local employment impact statement.

Comments regarding definitions

Tex. Code of Crim. Proc. 56C.001 Definition of Border Crime

STPRA commented that the definition of "border crime" in Tex. Code of Crim. Proc. §56C.001 should be expanded to include "illegal entry."

OAG Response:

OAG has reviewed the comment and declines to make this change at this time because expanding the definition of "border crime" would require a legislative change.

Request to clarify that Special Rangers can submit the required written report.

A state senator's office requested that special rangers appointed under Tex. Code of Crim. Proc. Art. 2.125 be included as an agency that can submit a written law enforcement report.

OAG response:

OAG considered the request and made this change to the definition of law enforcement agency.

Comments regarding collateral source requirements

Tex. Code of Crim. Proc. 56C.006(b) regarding reimbursement from an insurance contract.

1 Texas Administrative Code §65.2(6) Definition of Collateral Sources.

Mr. Hausser commented that requiring landowners to file insurance premiums to be eligible for the LCP will cause the landowner's insurance premiums to increase. TSCRA also commented it does not agree "with the inclusion of insurance contracts, including property insurance, in the definition of 'collateral resources.'" TSCRA commented that the definition of collateral sources in general is overbroad. TSCRA commented that the definition of collateral sources should be limited to insurance contracts.

OAG Response:

The OAG has reviewed the comments and declines to make changes because the rules requiring applicants to show they sought for and were not eligible to receive compensation from all available collateral sources is consistent with Tex. Code of Crim. Proc. Art. 56C.006.

1 Texas Administrative Code §65.200(b)(5) eligibility requirement to seek out and apply for all collateral sources.

TSCRA commented that the OAG should "remove or revise the requirement that essentially forces the rancher to exhaust all

other options by seeking out, applying for, and receiving a denial from 'all collateral sources' before applying to the LCP."

OAG response:

The OAG has reviewed the comment and declines to make changes because the proposed rules only require applicants to seek out and apply for all collateral sources before applying with the OAG. If the landowner is subsequently compensated by another source, the OAG will seek a refund from the landowner to prevent enrichment.

1 Texas Administrative Code §65.200 & §65.201 requirement to consider collateral sources.

STPRA commented that a process to accommodate collateral sources may be difficult to resolve and get payment from. STPRA requested guidance on whether "unreasonable delay on the part of third parties" resolves issue with those collateral sources.

OAG Comment:

The OAG reviewed the comments and declines to make any changes to the rule. The rules provide flexibility for collateral sources and allow for a claim to be paid while an application with a collateral source is pending. As the payer of last resort, OAG then requires the landowner to refund compensation if it later receives that compensation from another source. If the source never pays, there will be no need to go through the refund process.

Comments regarding deadlines

TSCRA commented that the OAG extend all of the proposed deadlines in the rules. The TSCRA in particular commented that the 1 TAC §65.303(b)(2) 30-day deadline to send information to complete an application is the "most egregiously short" deadline.

OAG Response:

The OAG reviewed the comment and declines to make any changes to the rule. The 30-day deadline is in place to keep the application moving forward and not delay payments based on missing information.

TSCRA also comments that a lack of access to reliable internet in "many rural areas of the state" impacts the consideration of deadlines.

OAG Response:

OAG reviewed the comment and declines to make any changes as the rule is consistent with the statute.

1 Texas Administrative Code §65.301 90-day time period to apply.

TSCRA commented that the 90-day time period to apply for the LCP is too short for farmers and ranchers given long days of work and the requirement to apply for available collateral sources. TSCRA commented that the OAG's requirements to apply for collateral sources are onerous and that the OAG does not "acknowledge the realities of trying to obtain relief from another program." The comment raises the concern that future legislation could add relief that applicants would not be able to apply for before 90-day period.

STPRA commented that the rules should include an extension for those landowners who experienced eligible damage between September 1, 2023, and the date these rules are final, and applications may be accepted.

OAG Comment:

The OAG reviewed the comments and declines to make any changes to the rules. The 90-day requirement ensures that only applications for recent incidents are considered. Further, the rules do not require receipt of a denial from a collateral source before applying. The rules include an exception to the 90-day deadline if good cause for the delay is shown.

1 Texas Administrative Code §65.304(d) Requirement to notify the OAG within 10 business days of becoming aware of compensation from a collateral source.

TSCRA comments that the 10 days to notify the OAG is "not reasonable for the realities of agriculture in Texas."

OAG response:

The OAG reviewed the comment and declines to make changes to the rule as 10 days is a reasonable timeframe for an applicant to notify the OAG that the applicant has been awarded funds from another source. The notification can be as simple as an email. Prompt notification is essential to comply with the requirement that the LCP is the payer of last resort. If an awardee receives compensation from another source that leads to unjust enrichment, the OAG needs notice to ensure it can recoup the overpayment.

1 Texas Administrative Code §65.203 Deadline during monitoring the use of compensation.

The Texas Farm Bureau commented that the 10-day period to respond to a request from the OAG for supporting documentation regarding the use of compensation is too short and recommended that the OAG extend this time period to 30 days. The Texas Farm Bureau commented that "[t]he daily responsibilities and workload of farmers and ranchers . . . will likely require more time."

OAG Response:

The OAG has reviewed the comment and extended the deadline to respond to an OAG request to 30 days.

Comments regarding application requirements

1 Texas Administrative Code §65.300 requirement that landowner submit application.

TSCRA commented that landowners lease their land to farmers and ranchers, or have property managers, who deal with the damage at issue in LCP. STPRA adds that property managers may be on site rather than the landowner and that person will deal with the practicalities of the damage. Both TSCRA and STPRA suggests adding "or agent" to 65.300(b)(2) so that lessees can submit the application.

OAG Response:

The OAG has reviewed the comments and amended §65.300(b)(2) to include an authorized agent as determined by the OAG. The landowner is still the entity that receives compensation under the LCP. Tex. Code of Crim. Proc. 56C.003.

1 Texas Administrative Code §65.300(d)(4) use of ag/timber registration number to prove agricultural land use.

TSCRA commented that not all landowners will have the required ag/timber registration number. STPRA suggests that the landowner be required to use their property identification number from the local appraisal district instead.

OAG Response:

The OAG has reviewed the comment and amended §65.300(d)(4) to broadly require "identifying property information needed to determine eligibility" for proof of landownership rather than to specifically require an ag/timber registration.

Other comments

1 Texas Administrative Code §65.303 regarding process following denial of an application.

STPRA commented that the rule should be amended to allow a landowner to reapply if new information regarding the incident is available.

OAG Response:

The OAG has reviewed the comment and declines to make changes to the rules. If an applicant's claim is denied, the applicant can use the appeals process in §65.400 which allows the applicant to submit new information for consideration.

1 Texas Administrative Code §65.202 determination of reasonable compensation if no proof of actual cost for repairs.

STPRA commented with questions about the determination of standardized compensation rates. STPRA also commented asking if receipts and bid estimates can be used to support larger and non-standard damage claims and repair costs.

OAG Response:

More information on the rates will be available on the OAG's website. Section 65.201(d) explains that the fair market price is used when the claimant does not, for a reasonable reason, submit proof of the actual cost of the repair.

1 Texas Administrative Code §65.302 regarding crime location in law enforcement reports.

STPRA comments that precise latitude and longitude coordinates should be requested and used when possible.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because §65.302 requires the law enforcement report include the location of the incident, which is sufficient to determine eligibility for the LCP.

Request for OAG to gather data on personal property losses or damages that occur in conjunction with the real property damage.

STPRA commented requesting the application for LCP include OAG gather data for personal losses or damages resulting from damage caused in relation to border crime.

OAG Response:

The OAG reviewed the comments and declines to make changes to the rule because gathering data is not the intent of the LCP.

Comment regarding the application

TSCRA commented that the final application "should be simple, succinct, and user-friendly," and request an opportunity to review and give input.

OAG Response:

The OAG has been working to develop the application through an online site and a PDF as a backup while finalizing the rules. The rules incorporate the application requirements.

Other changes

The OAG removed redundancies regarding the administrative appeals process and corrected an inconsistency regarding collateral sources.

SUBCHAPTER A. SCOPE, CONSTRUCTION, AND DEFINITIONS

1 TAC §65.1, §65.2

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.1. Authority, Scope, and Construction of Rules.

This chapter applies to the administration of the Landowner Compensation for Property Damage caused by Certain Criminal Activities program pursuant to Texas Code of Criminal Procedure, Chapter 56C. The Office of the Attorney General (OAG) adopts this chapter under the authority of the Texas Code of Criminal Procedure, Chapter 56C and Texas Government Code, Chapter 402.

§65.2. Definitions.

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

(1) "Agricultural land" means any land the use of which qualifies the land for appraisal based on agricultural use as defined under Subchapter D, Chapter 23, Texas Tax Code.

(2) "Agricultural use" includes but is not limited to the following activities: cultivating the soil, producing crops for human food, animal feed, or planting seed or for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; raising or keeping exotic animals for the production of human food or of fiber, leather, pelts, or other tangible products having a commercial value; planting cover crops or leaving land idle for the purpose of participating in a governmental program, provided the land is not used for residential purposes or a purpose inconsistent with agricultural use; and planting cover crops or leaving land idle in conjunction with normal crop or livestock rotation procedure. The term also includes the use of land to produce or harvest logs and posts for the use in constructing or repairing fences, pens, barns, or other agricultural improvements on adjacent qualified open-space land having the same owner and devoted to a different agricultural use. The term also includes the use of land for wildlife management. The term also includes the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, defined by the Texas Tax Code §23.51(2).

(3) "Application" means a written request for compensation under the Landowner Compensation for Property Damage caused by Certain Criminal Activities program and includes all supporting documentation that is provided for claim determination as prescribed by the OAG.

(4) "Border crime" means conduct:

(A) constituting an offense under:

(i) Subchapter D, Chapter 481 (Texas Controlled Substances Act), Health and Safety Code;

(ii) Section 20.05 (Smuggling of Persons) or 38.04 (Evading Arrest or Detention), Penal Code; or

(iii) Chapter 20A (Trafficking of Persons), Penal Code; and

(B) involving transnational criminal activity.

(5) "Claimant" means any landowner applying for any benefit under this chapter.

(6) "Closed application" means an application which has been administratively closed under this chapter.

(7) "Collateral source" means financial compensation for real property damage under a state, local, or federal funding program, or an insurance contract and may include property insurance; state funding; local funding; federal funding; or foreign consulate payments.

(8) "Incident" means an occurrence of real property damage on agricultural land caused by a trespasser as a result of an offense under Chapter 28, Penal Code, in the course or furtherance of a border crime or engaged in a border crime that has been reported to law enforcement.

(9) "Landowner" means an individual or business that owns land in the State of Texas.

(10) "Law enforcement agency" means a governmental organization that employs commissioned peace officers as defined by Texas Code of Criminal Procedure Article 2.12, and shall include special rangers appointed pursuant to Texas Code of Criminal Procedure Article 2.125.

(11) "LCP" means Landowner Compensation Program.

(12) "OAG" means Office of the Attorney General.

(13) "Real Property" means agricultural land that has the meanings assigned by Texas Tax Code, §1.04(2). The term does not include crops, farm equipment, or livestock.

(14) "Report" means written documentation created or provided by a law enforcement agency in connection with an incident.

(15) "Trespasser" has the meaning assigned by Texas Civil Practice and Remedies Code §75.007.

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 April 22, 2024.

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Justin Gordon

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Office of the Attorney General

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For further information, please call: (512) 475-4291



SUBCHAPTER B. PROGRAM GUIDELINES

1 TAC §§65.200 - 65.203

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.200. Eligibility and Administration.

(a) The OAG shall determine the eligibility, standards, and reasonable limits on compensation for applications and payments in a manner consistent with the law and this chapter. Use of payments made under the LCP are subject to ongoing review by the OAG to ensure compliance with conditions of the awards.

(b) The following requirements must be met in order for a claimant to be eligible for compensation under the LCP:

(1) the claimant must be a landowner;

(2) the land for which the claimant submits an application for compensation under the LCP must be agricultural land;

(3) the damage for which the claimant submits an application must be real property damage caused by a trespasser as a result of an offense under Chapter 28, Texas Penal Code, that was committed in the course of or in furtherance of a border crime or a law enforcement response to a trespasser who was engaged in a border crime;

(4) the claimant must submit a written report created by a law enforcement agency stating real property damage occurred in connection with a border crime; and

(5) the landowner sought and was not eligible to receive compensation from all available collateral sources.

(c) The real property damage for which a claimant files a claim must have occurred on or after September 1, 2023.

(d) A claimant may not be eligible for compensation under the LCP if the claimant does not submit an application in accordance with this chapter.

§65.201. Program Compensation.

(a) The OAG may award compensation to claimants determined by the OAG to have met all eligibility requirements in §65.200 of this chapter.

(b) Compensation will be reduced for any portion of the otherwise eligible real property damage for which the claimant received compensation from a collateral source.

(c) Awarded compensation will be an amount the OAG determines is reasonable to restore the real property to equal value of the real property before the damage.

(d) The OAG may determine the fair market price of a cost to determine a reimbursable amount of compensation if a claimant does not, for a reasonable reason, submit proof of the actual cost for repair. The OAG has the discretion to determine whether the reason a claimant is not able to provide proof of actual cost for repair is reasonable.

§65.202. Compensation Amount Guidelines.

(a) Real property repairs are limited to the following categories:

- (1) labor cost for repairs made;
- (2) cost for fence repair, including materials;
- (3) cost for structure repair, including materials;
- (4) disposal and removal of damaged property; or
- (5) any other costs the OAG determines is reasonable to restore fair market value.

(b) The OAG will set the compensation rates for costs enumerated in subsection (a) of this section in accordance with fair market value guidelines and publish the rates on the OAG's website. The OAG may periodically review and adjust the compensation rates at its discretion to ensure fair market value.

(c) The maximum amount awarded per incident will not exceed \$75,000.

(d) Applications submitted by a claimant for \$15 or less will not be considered.

§65.203. Monitoring Use of Compensation.

(a) The OAG may verify and investigate the use of compensation awarded under the LCP. Verification and investigation includes but is not limited to:

- (1) verification of any documentation submitted to the OAG;
- (2) review of records submitted by a claimant; or
- (3) a post-award audit to verify actual charges, bills, payments, and the delivery of goods or services.

(b) The OAG may require additional supporting documentation from a claimant. The claimant must respond to the OAG's request within 30 days, unless good cause is shown.

(c) If the claimant fails to provide additional supporting documentation or the OAG determines the claimant improperly used awarded compensation, then the OAG may require a claimant to refund the awarded funds in accordance with this chapter.

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

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SUBCHAPTER C. APPLICATION FOR COMPENSATION

1 TAC §§65.300 - 65.307

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.300. Application for Compensation.

(a) All communications and applications for compensation shall be submitted to the LCP in a manner and form prescribed by the OAG.

(b) An application for compensation is complete when the application:

- (1) is filled out in its entirety as prescribed by the OAG;
- (2) signed by the claimant or authorized agent, as determined by the OAG;
- (3) contains all relevant required documentation; and
- (4) contains any other information requested by the OAG to determine eligibility.

(c) The OAG will not consider an application until the application is complete as prescribed in §65.300(b).

(d) An application must include:

- (1) a written report, including an incident or claim number, by a law enforcement agency that documents the real property damage occurred in connection with a border crime;
- (2) photographic evidence of the real property damage;
- (3) a detailed description of the real property damage;
- (4) any identifying property information needed to determine eligibility; and
- (5) insurance declarations or denial of coverage.

(e) The OAG may require the claimant to provide:

- (1) Federal Tax Identification Number (EIN);
- (2) entity formation information;
- (3) the claimant's social security number;
- (4) the claimant's Individual Taxpayer Number (ITIN);
- (5) itemized receipts or invoices of cost for repair(s);
- (6) itemized receipts or invoices of cost for labor; or
- (7) any other information needed to determine eligibility.

(f) If the claimant submits an application that is not complete, the OAG will notify the claimant in writing, that the application is incomplete and request that the additional information.

(g) If the claimant does not return the completed application to the OAG within 30 days from the date generated on the OAG's request for additional information, the application may be closed in accordance with §65.303.

§65.301. Timely Filing an Application.

(a) An application must be submitted with the OAG no later than 90 days from the date of an incident.

(b) The OAG may extend the time for filing an application upon good cause shown by the claimant. Good cause, as determined by the OAG, may include the following circumstances:

- (1) The claimant was not reasonably aware of the LCP;
- (2) Extenuating circumstances prevented the claimant from filing in a timely manner; or
- (3) Any other circumstance that the OAG considers significant.

§65.302. Law Enforcement Report.

(a) A claimant must report an incident to the appropriate law enforcement agency within a reasonable period as determined by the OAG in order to be eligible for compensation under the LCP.

(b) The OAG may extend the time for reporting an incident to law enforcement if the OAG determines that the extension is justified by extraordinary circumstances.

(c) The report must include the location of the incident.

§65.303. Denial or Closure of an Application.

(a) The OAG will deny compensation under this article if:

(1) real property damage was not caused by a trespasser committing a border crime on agricultural land;

(2) the claimant was eligible for reimbursement from another collateral source and failed to seek reimbursement from the collateral source prior to submitting an application; or

(3) the claimant did not meet the requirements for eligibility under this chapter; or

(4) the claimant knowingly or intentionally provides false or fraudulent information or supporting documentation to the OAG.

(b) An application for compensation may be closed at the discretion of the OAG if any of the following conditions occurs:

(1) No written report by a law enforcement agency was obtained;

(2) The claimant fails to respond within a 30-day period to a request made by the OAG for additional information as required by §65.300;

(3) The OAG is unable, within 30 days of receiving an application, to obtain information substantiating the incident; and

(4) The claimant fails to report that the claimant received or was eligible to receive compensation through a collateral source.

(c) The OAG may reopen an application that has been closed at its discretion upon written request from a claimant that establishes good cause.

(d) The OAG will not reopen an application that has been denied. A claimant may not reapply for compensation for an incident.

§65.304. Collateral Sources.

(a) The LCP is the payer of last resort, and the OAG will not award compensation to a claimant if the OAG determines the claimant is or was eligible for reimbursement from any available collateral source and failed to seek reimbursement from an available collateral source.

(b) The OAG may deny or reduce the compensation if the OAG notifies the claimant of a possible reimbursement amount from any available collateral source, and the claimant fails to apply or pursue the compensation within a reasonable time frame as determined by the OAG. The acceptable time frame will be determined by the OAG upon consideration of all relevant facts and circumstances.

(c) A claimant must seek compensation from any available collateral sources prior to submitting a claim to the OAG, when reasonably possible.

(d) Unless good cause is shown, if a claimant receives compensation from a collateral source, the claimant must report the compensation amount and the source to the OAG before the claimant will be eligible to receive compensation. If a claimant is awarded compensation by a collateral source after the OAG awarded compensation under the LCP, the claimant must notify the OAG of the amount and the source of the collateral source within 10 business days of becoming aware of the compensation from a collateral source.

(e) If the claimant fails to utilize any available collateral source for all or a portion for real property damage, the OAG may deny or reduce an award under the LCP.

(f) Gifts, donations, or charitable contributions made directly to a claimant are not a collateral source and may not reduce the determination of the actual real property damage incurred by the claimant.

§65.305. Refunds from Claimants.

(a) The OAG may require a refund from a claimant if any compensation was awarded under the LCP based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

(b) The OAG may require the claimant to refund any overpayment in full or in installments or reduce future or pending payments by the amount of the overpayment.

(c) The OAG may discontinue or suspend all current and future payments to a claimant from whom the OAG has requested a refund.

(d) The OAG may pursue available administrative or civil penalties in addition to seeking a refund upon determining that compensation was awarded based on fraud or mistake or based on new information that would disqualify a claimant from being eligible for compensation.

§65.306. Insufficient Funds.

The OAG will not exceed the amount of money appropriated for compensation and available funds will be awarded in a priority deemed appropriate by the OAG.

§65.307. Use of the Electronic Communication.

(a) The OAG may send a claimant any notices, forms, or other documentation and information by electronic means.

(b) The OAG may require a claimant to submit notices, forms, or other documentation and information by electronic means, unless good cause is shown.

(c) In accordance with the Uniform Electronic Transactions Act, Texas Business and Commerce Code, Chapter 322, a notice, form, record, or signature may not be denied legal effect or enforceability solely because it is in electronic form.

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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Justin Gordon
General Counsel
Office of the Attorney General
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For further information, please call: (512) 475-4291



SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §§65.400 - 65.402

ADOPTION AND STATUTORY AUTHORITY

New 1 TAC Chapter 65 is adopted pursuant to the Texas Code of Criminal Procedure, Chapter 56C, as added by S.B. 1133 passed by the 88th Texas Legislature, Regular Session (2023) which requires the OAG to adopt rules necessary to implement Chapter 56C.

New Chapter 65 is further adopted pursuant to the General Appropriations Act for Fiscal Year 2024-2025, Contingency Rider Section 18.03, which appropriates funds to create and administer the Landowner Compensation Program.

CROSS-REFERENCE TO STATUTE

No other regulations or statutes are affected by this change.

§65.400. *Request for Reconsideration of Adverse Action.*

(a) A claimant may request a reconsideration of all or any part of the OAG's decision to make or deny an award on an application or on the amount of an award.

(b) Within 30 days from the date that the OAG's office provides the claimant with the award written decision notice, the claimant must submit a signed, written request for reconsideration stating the reasons for the request for reconsideration. If the claimant fails to file a written request for reconsideration to the OAG's adverse action within the 30-day time period, the decision of the OAG becomes binding, and the claimant waives the right to further appeal.

(c) The OAG may not grant a reconsideration if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for reconsideration of the OAG's adverse action within the 30-day time period. If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding, and the claimant waives the right to further appeal.

(d) The OAG will provide the claimant a written notification of its reconsideration decision. If the claimant is dissatisfied with the reconsideration of the OAG's award decision, the claimant must file a signed, written request for a hearing with the OAG within 30 days of the date of the reconsideration decision. If the claimant fails to file a written request for a hearing within the 30-day time period, the reconsideration decision becomes binding, and the claimant waives the right to a hearing.

(e) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

§65.401. *Prehearing Conference.*

At any time before a hearing is conducted, the hearing officer may request a prehearing conference, either in person or by telephone, with the claimant, or his or her legal representative in order to establish whether a hearing on an application for compensation is necessary.

§65.402. *Hearing.*

(a) If the claimant is dissatisfied with the reconsideration decision, the claimant may file a signed, written request for hearing.

(b) The OAG may not grant a request for a hearing if a request is not filed by the claimant within the 30-day time period, unless the claimant shows good cause for late filing. The claimant must provide to the OAG a signed, written explanation showing good cause for failing to submit a written request for hearing within the 30-day time period.

(c) If the OAG does not find that good cause exists for late filing, the decision of the OAG becomes binding, and the claimant waives the right to further appeal. If the OAG determines that a hearing is necessary, then the claimant will receive notice of hearing not less than 10 days before the date of the hearing, stating the time, date, and place of the hearing.

(d) The hearing shall be conducted in Texas in a manner consistent with the law and rules adopted under this chapter.

(e) Any costs for the claimant to travel to the hearing are entirely the financial responsibility of the claimant and those costs will not be reimbursed by the OAG.

(f) Failure of the claimant to appear for the hearing, may result in the entry of a final decision based upon the available record. A claimant may have the hearing rescheduled by making a request to reschedule at least two OAG business days prior to the hearing. Multiple requests for reschedule may be denied by the OAG. If a claimant fails to make a timely request to reschedule, the OAG may reschedule the hearing upon good cause shown by the claimant.

(g) The OAG will notify the claimant in writing of the final decision, including the reasons for the decision.

(h) A claimant may seek judicial review of all or any part of the final decision.

(i) In any proceeding under this subchapter, the burden of proof is upon the claimant to prove by a preponderance of the evidence that grounds for compensation exist.

(j) A claimant who fails to exhaust all available administrative remedies waives the right to seek judicial review.

(k) A final decision from the OAG may only be rendered by the OAG hearing officer after a prehearing conference, a final ruling hearing, or based on the available record.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL
SUBCHAPTER H. STORAGE AND SALE OF
FIREWORKS

28 TAC §34.815

The commissioner of insurance adopts amended 28 TAC §34.815, concerning the sale of retail fireworks permits. The amendments to §34.815 implement House Bill 2259, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 487). The rules will not be republished.

REASONED JUSTIFICATION. Amendments to §34.815 are necessary to enact changes in accordance with HB 2259, which revised Occupations Code §2154.202 by removing language providing for the purchase of retail fireworks permits from licensed manufacturers, distributors, or jobbers or directly from the State Fire Marshal's Office (SFMO) and specified that the Texas Department of Insurance (TDI) is required to enable the sale of retail fireworks permits through a web page that is linked from TDI's website.

Before HB 2259, the Occupations Code allowed various methods for obtaining and distributing retail permits to sell fireworks. These permits could either be acquired directly from SFMO or purchased through distributors, manufacturers, or jobbers. They were typically sold in booklets containing 20 permits. However, these booklets, which included carbon copies of each retail permit sold, proved to be cumbersome for both the industry and SFMO. The information within these booklets had to be manually typed, causing delays in SFMO's receipt of information regarding firework sales. This manual process was also prone to data entry errors and required SFMO to process refunds for unused retail permits in an outdated and slow manner. To simplify and streamline this process, HB 2259 requires that retail firework permits be available for purchase through TDI's website, eliminating the need to obtain them from manufacturers, distributors, or jobbers.

Adopted amendments revise and restructure §34.815 using plain language to implement HB 2259. Previously, the rule's steps to get a retail permit were interrupted by bulk storage rules, which added confusion, and the new structure will make the rule more understandable by providing a natural, sequential order of steps necessary to obtain a retail permit to sell fireworks that reflects the new requirements.

New subsection (b) specifies the requirement that an applicant have a sales tax permit number, which must be entered on the retail fireworks permit application in order to receive a permit. This is an existing requirement currently addressed in subsection (b)(5), but the new text more clearly and plainly addresses it.

The previous subsection (b) is redesignated as subsection (c), and the text of the subsection is revised to reflect the changes in how retail fireworks permits may now be obtained. The requirement that a retail permit be signed is deleted from the text and addressed in new subsection (d). Paragraphs (1) and (4) are removed because this text pertains to fireworks sales permit purchases from manufacturers, distributors, or jobbers, which is no longer allowed, and because copies of Occupations Code Chapter 2154 and the fireworks rules are readily available online. Paragraphs (2), (3), and (6) are removed and their contents are included as new text in new subsections (e) - (g).

The previous subsection (c) is deleted because it relates to the purchase of retail fireworks permits in ways no longer allowed under HB 2259.

New subsection (d) provides that, once issued, a retail permit be printed, signed, and posted in a visible place. The requirements to print and post a retail permit are new, reflecting that permits may now only be obtained through a website; this provides documentary evidence of the retail permit, similar to how participating manufacturers, distributors, or jobbers would formerly provide evidence of the valid issuance of a permit.

New subsection (e) provides that retail permits may be issued only to those individuals or groups engaged in the retail sale of fireworks. This requirement was previously addressed in subsection (b)(6); it is relocated here to facilitate the rule's clarity.

New subsection (f) provides that bulk storage of Fireworks 1.4G must be done in compliance with §34.823. This provision is relocated from its previous place in subsection (b)(2) to facilitate the rule's clarity.

New subsection (g) provides that Fireworks 1.4G must be sold only through permitted sites and within the selling periods defined in Occupations Code §2154.202. This provision is relocated from its previous place in subsection (b)(3) to facilitate the clarity of the rule.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on March 4, 2024. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amended §34.815 under Occupations Code §2154.052(a) and (b), and Insurance Code §36.001.

Occupations Code §2154.052(a) provides that the commissioner will administer Occupations Code Chapter 2154 through the state fire marshal and may issue rules to administer the chapter.

Occupations Code §2154.052(b) provides that the commissioner adopt, and the state fire marshal must administer, rules necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 813. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM EMPLOYMENT AND TRAINING

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 813, relating to Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T):

Subchapter A. General Provisions, §§813.1, 813.2, and 813.5

Subchapter D. Allowable Activities, §813.32

Amended §§813.1, 813.2, 813.5, and 813.32 are adopted without changes to the proposal, as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 849), and, therefore, the adopted rule text will not be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 813 rule change is to amend rule language to conform with SNAP provisions of the Fiscal Responsibility Act of 2023, revise references to the case management system, and update the allowable activities for able-bodied adults without dependents (ABAWDs).

Texas Government Code §2001.039 requires that every four years each state agency review and consider for re adoption, revision, or repeal each rule adopted by that agency. TWC assessed whether the reasons for adopting the rules in Chapter 813 continue to exist. TWC finds that the chapter is needed and that the reasons for adopting the chapter continue to exist. TWC, therefore, readopts the rules in Chapter 813, Supplemental Nutrition Assistance Program Employment and Training.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC adopts the following amendments to Subchapter A:

§813.1. Purpose

Section 813.1 updates the SNAP purpose to align with the Fiscal Responsibility Act of 2023.

§813.2. Definitions

Section 813.2 extends the age range of ABAWDs to align with the Fiscal Responsibility Act of 2023.

§813.5. Documentation, Verification, and Supervision of Work Activities

Section 813.5 updates language related to TWC's case management system.

SUBCHAPTER D. ALLOWABLE ACTIVITIES

TWC adopts the following amendments to Subchapter D:

§813.32. SNAP E&T Activities for ABAWDs

Section 813.32 adds work experience as an allowable activity for ABAWDs.

PART III. PUBLIC COMMENTS

The public comment period closed on March 18, 2024. No comments were received.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§813.1, 813.2, 813.5

PART IV. STATUTORY AUTHORITY

The adopted rules implement provisions of the federal Fiscal Responsibility Act of 2023 by making conforming changes to TWC rules regarding Supplemental Nutrition Assistance Program Employment and Training.

The rules are adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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

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Les Trobman

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 850-8356



SUBCHAPTER D. ALLOWABLE ACTIVITIES

40 TAC §813.32

The rule is adopted under Texas Labor Code §301.0015(a)(6) and §302.002(d), which provide TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, Chapter 302, and Title 10, Texas Government Code, Chapter 2308.

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

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CHAPTER 853. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

The Texas Workforce Commission (TWC) adopts amendments to the following sections of Chapter 853, relating to Independent Living Services for Older Individuals Who Are Blind:

Subchapter A. Independent Living Services for Older Individuals Who Are Blind, §§853.1 - 853.6

Subchapter B. Services, §853.10

Subchapter C. Customer Financial Participation, §853.21

Subchapter D. Case Documentation, §853.30

Subchapter E. Customer's Rights, §853.40

Amended §§853.3, 853.4, 853.10, and 853.30 are adopted without changes to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will not be published.

Amended §§853.1, 853.2, 853.5, 853.6, 853.21, and 853.40 are adopted with changes to the proposal, as published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 29), and, therefore, the adopted rule text will be published.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the Chapter 853 rule change is to amend eligibility for the OIB program, clarify language for consistency purposes, and complete its statutorily required four-year review.

Texas Government Code §2001.039 requires a state agency to review and consider for readoption each of its rules every four years. In accordance with the statute, TWC has reviewed Chapter 853, Independent Living Services for Older Individuals Who Are Blind, and readopts the rules as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. Independent Living Services for Older Individuals Who Are Blind

TWC adopts amendments to Subchapter A, as follows:

§853.1. Definitions

Section 853.1 is amended to remove references to Independent Living Services (ILS) and add definitions for "Older Individuals Who are Blind (OIB)" and "significant visual impairment." Subsequent paragraphs are renumbered.

At adoption, TWC amended §853.1 to correct the name of TWC's Vocational Rehabilitation Division.

At adoption, TWC amended §853.1 to add the *Texas Register* relating to reference.

§853.2. Referral

Section 853.2 is amended to remove a reference to ILS, add additional referral sources, and to more clearly describe the referral process.

At adoption, TWC amended §853.2(c) to change "referral only" to "minimal services successful closure" to make the language

consistent with program terminology and other amendments within this section and this chapter.

§853.3. Accessible Communication

Section 853.3 is amended to remove references to ILS.

§853.4. Application

Section 853.4 is amended to more clearly describe the application process.

§853.5. Eligibility

Section 853.5 is amended to remove a reference to ILS and add "significant visual impairment" to the eligibility criteria.

At adoption, TWC amended §853.5(a)(2) to correct the formatting of the *Texas Register* relating to reference.

At adoption, TWC amended §853.5(e) to add the *Texas Register* relating to reference.

§853.6. Ineligibility Determination

Section 853.6 is amended to clarify language.

At adoption, TWC amended §853.6(a) to add the *Texas Register* relating to reference.

SUBCHAPTER B. Services

TWC adopts amendments to Subchapter B, as follows:

§853.10. Independent Living Plan

Section 853.10 is amended to clarify the time frame for developing an ILP and to update the form number.

SUBCHAPTER C. Customer Financial Participation

TWC adopts amendments to Subchapter C, as follows:

§853.21. Customer Participation in the Cost of Services

Section 853.21 is amended to clarify language relating to customer participation in cost of service and to remove a reference to ILS.

At adoption, TWC amended §853.21(a) to correct the formatting of the *Texas Register* relating to reference.

SUBCHAPTER D. Case Documentation

TWC adopts amendments to Subchapter D, as follows:

§853.30. Case Closure

Section 853.30 is amended to add language regarding minimal services closures and remove a subsection about post-closure services. The removed subsection included obsolete terminology that was later replaced but is no longer applicable to OIB.

SUBCHAPTER E. Customer's Rights

TWC adopts amendments to Subchapter E, as follows:

§853.40. Rights of Customers

Section 853.40 is amended to remove references to ILS and add receiving a diagnosis of significant visual impairment as one of the requirements to receive OIB services.

At adoption, TWC amended §853.40(a) to add the *Texas Register* relating to reference.

At adoption, TWC amended §853.40(b) to correct the formatting of the *Texas Register* relating to reference.

PART III. PUBLIC COMMENTS

The public comment period closed on February 19, 2024. No comments were received.

SUBCHAPTER A. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

40 TAC §§853.1 - 853.6

PART IV. STATUTORY AUTHORITY

The rules are adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rules relate to Title 4, Texas Labor Code, particularly Chapter 352.

§853.1. Definitions.

In addition to the definitions contained in Texas Labor Code §352.001, 34 CFR §361.5, and §856.3 of this title (relating to Definitions) of the Agency's Vocational Rehabilitation Division rules, the following words and terms, when used in this chapter, shall have the following meanings:

(1) Act--The Rehabilitation Act of 1973, as amended (29 USC 701 et seq.).

(2) Adjusted income--The dollar amount that is equal to a household's annual gross income, minus allowable deductions.

(3) Applicant--An individual who applies for Older Individuals Who Are Blind (OIB) services.

(4) Attendant care--A personal assistance service provided to an individual with significant disabilities to aid in performing essential personal tasks, such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(5) Blind--An individual having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(6) Center for Independent Living (CIL)--Has the meaning assigned by §702 of the Act (29 USC §796a).

(7) Client Assistance Program (CAP)--A federally funded program under 34 CFR Part 370 that provides information, assistance, and advocacy for individuals with disabilities who are seeking or receiving services from programs funded under the Act. In Texas, the designated agency is Disability Rights Texas (DRTx).

(8) Comparable services or benefits--Services and benefits that are provided or paid for, in whole or part, by other federal, state, or local public programs, or by health insurance, third-party payers, or other private sources.

(9) Customer--An individual who is eligible for and receiving OIB services under this chapter.

(10) Customer participation system--The system for determining and collecting the financial contribution that a customer may be required to pay for receiving OIB services.

(11) Customer representative--Any individual chosen by a customer, including the customer's parent, guardian, other family member, or advocate. If a court has appointed a guardian or representative, that individual is the customer's representative.

(12) Federal Poverty Guidelines--The poverty guidelines updated periodically in the *Federal Register* by the US Department of Health and Human Services under the authority of 42 USC §9902(2), found at <https://aspe.hhs.gov/poverty-guidelines>.

(13) Independent Living Plan (ILP)--A written plan in which the customer and OIB staff have collaboratively identified the services that the customer needs to achieve the goal of living independently.

(14) Low vision--A condition of having a visual acuity not more than 20/70 in the better eye with correcting lenses, or visual acuity greater than 20/70 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 30 degrees, or having a combination of both.

(15) Older Individuals Who Are Blind (OIB)--The independent living services program that serves individuals ages 55 and over who are blind or visually impaired.

(16) Significant disability--A significant physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community.

(17) Significant visual impairment--A disease or condition of the eye that does not meet the definitions of Blind or Low Vision but does create a significant impediment to independent living and cannot be corrected with glasses or contact lenses.

(18) Transition services--Services that:

(A) facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences, with the requisite supports and services; and

(B) provide assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community.

§853.2. Referral.

(a) An individual may be referred for OIB services in a variety of ways, including, but not limited to:

- (1) a physician's office;
- (2) a community organization;
- (3) the Center for Independent Living (CIL);
- (4) a senior community organization;
- (5) family, customer representative, and friends;
- (6) contract providers; or
- (7) online self-referral portal.

(b) A referral shall include the name of the individual seeking services, the address where the individual resides, and an email address and telephone number, if available.

(c) During the referral process, OIB staff may determine the level of services needed by the customer, provide minimal services, or verify the customer's eligibility criteria. Minimal services may include information and referral, a guide to independent living, bump dots for kitchen appliances, and low-cost magnifiers. If minimal services are all that a customer requires, the case may be closed as a minimal services successful closure.

(d) For service delivery to begin, an individual shall submit a complete application and document that all eligibility requirements are met.

§853.5. *Eligibility.*

(a) To be eligible for OIB, a customer must:

- (1) be age 55 or older;
- (2) be blind or have low vision or a significant visual impairment, as defined in §853.1, of this subchapter (relating to Definitions);
- (3) be an individual for whom independent living goals are feasible; and
- (4) be present in Texas.

(b) Eligibility for blindness, low vision, or a significant visual impairment is determined by OIB staff based on the documented diagnosis of a licensed practitioner.

(c) Individuals shall establish eligibility through existing data and information, including, but not limited to, medical records and information used by the Social Security Administration. The information may be obtained from the applicant, the applicant's family members, or the applicant's representative. OIB staff may assist in locating or obtaining existing documentation.

(d) The Agency shall substantively evaluate the documentation and application to determine whether eligibility requirements are met.

(e) OIB staff shall endeavor to make an eligibility determination within 60 days from the time a completed and signed application for services has been received. The eligibility determination is conditional on the applicant's availability to complete the assessment process, as set forth in §853.4(3) of this subchapter (relating to Application). When an applicant is unavailable to complete such assessment process in a timely manner due to unforeseen circumstances, which may include, but are not limited to, medical conditions or hospitalizations, the 60-day period shall be abated until the applicant is available to complete the necessary assessment process to determine eligibility.

(f) Eligibility cannot be established unless and until all required elements under subsection (a) of this section have been completed and documented, including any assessment to establish eligibility.

(g) Eligibility requirements are applied without regard to an individual's age, color, creed, gender, national origin, race, religion, or length of time present in Texas.

§853.6. *Ineligibility Determination.*

(a) A determination of ineligibility shall be based only on a substantive evaluation of an applicant's completed and signed application, including all documentation required to establish eligibility under §853.5(a) of this subchapter (relating to Eligibility).

(b) Before making a determination of ineligibility, OIB staff shall provide the applicant or the applicant's representative, as appropriate, an opportunity to consult with OIB staff. OIB staff shall notify the applicant, or the applicant's representative, as appropriate, of an ineligibility determination. Notice shall be provided in accessible format and through accessible methods and in compliance with Texas Government Code §2054.460, if applicable. The notice shall include the following:

(1) A brief statement of the ineligibility determination, with reference to the requirements under this chapter and any deficiencies;

- (2) The mailing date of the determination;
- (3) An explanation of the individual's right to an appeal;
- (4) The procedures for filing an appeal with the Agency, including applicable time frames;
- (5) The right to have a hearing representative, including legal counsel;
- (6) How to contact the Texas CAP, which is DRTx; and
- (7) The contact information to which the appeal must be sent.

(c) When appropriate, OIB staff may refer the applicant to other agencies and facilities.

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

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Les Trobman

General Counsel

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SUBCHAPTER B. SERVICES

40 TAC §853.10

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

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

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SUBCHAPTER C. CUSTOMER FINANCIAL PARTICIPATION

40 TAC §853.21

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.21. *Customer Participation in the Cost of Services.*

(a) Some independent living services, as set forth in §853.11 or this chapter (relating to Scope of Services), may be subject to customer participation in cost of service as defined in OIB policy.

(b) OIB staff shall administer the customer participation system in accordance with the rules in this chapter, the OIB policy manual, and 34 CFR §367.67(b)(1).

(c) OIB staff shall provide those independent living services not requiring customer participation in cost of services as set forth in §853.11 of this chapter at no cost to the customer.

(d) OIB staff shall determine the customer's adjusted gross income and the percentage of the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> for that income, based on documentation provided by the customer.

(e) OIB staff is required to apply the Federal Poverty Guidelines at <https://aspe.hhs.gov/poverty-guidelines> to determine customer participation.

(f) The customer or customer's representative shall sign an ILP acknowledging the customer's contribution for services and providing written agreement that:

(1) the information provided by the customer or the customer's representative about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits is true and accurate; or

(2) the customer or the customer's representative chooses not to provide information about the customer's household size, annual gross income, allowable deductions, and comparable services or benefits.

(g) If the customer or the customer's representative, as appropriate, chooses not to provide information on the customer's household size, annual gross income, allowable deductions, and comparable services or benefits, the customer shall pay the entire cost of applicable services.

(h) The customer shall report to OIB staff as soon as possible all changes to household size, annual gross income, allowable deductions, and comparable services or benefits and sign an amended ILP.

(i) When the customer amends the ILP, the new customer's contribution for services takes effect the beginning of the following month. The new contribution shall not be applied retroactively.

(j) OIB staff shall develop a process to reconsider and adjust the customer's contribution for services based on circumstances that are both extraordinary and documented. This may include assessing the customer's ability to pay the customer's participation amount. Extraordinary circumstances include:

(1) an increase or decrease in income;

(2) unexpected medical expenses;

(3) unanticipated disability-related expenses;

(4) a change in family size;

(5) catastrophic loss, such as fire, flood, or tornado;

(6) short-term financial hardship, such as a major repair to the customer's home or personally owned vehicle; or

(7) other extenuating circumstances for which the customer makes a request and provides supporting documentation.

(k) The customer's contribution for services remains in effect during the reconsideration and adjustment process.

(l) OIB staff shall:

(1) use program income that is received from the customer only to provide services outlined in §853.11 of this chapter; and

(2) report fees collected as program income.

(m) The Agency may not use program income received from the customer to supplant any other fund sources.

(n) The Agency may not pay any portion of the customer's contribution.

(o) The customer's ILP and all financial information collected by OIB staff are subject to subpoena.

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

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SUBCHAPTER D. CASE DOCUMENTATION

40 TAC §853.30

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--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

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SUBCHAPTER E. CUSTOMER'S RIGHTS

40 TAC §853.40

The rule is adopted under:

--Texas Labor Code §352.103(a), which provides TWC with the specific authority to establish rules for providing vocational rehabilitation services; and

--Texas Labor Code §301.0015(a)(6), which provides TWC with the general authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The adopted rule relates to Title 4, Texas Labor Code, particularly Chapter 352.

§853.40. *Rights of Customers.*

(a) In accordance with applicable legal provisions, the Agency does not, directly or through contractual or other arrangements, exclude, deny benefits to, limit the participation of, or otherwise discriminate against any individual on the basis of age, color, disability, national origin, political belief, race, religion, sex, or sexual orientation. For the purposes of receiving OIB services, the customer must be blind or have a low vision diagnosis or a significant visual impairment as defined in §853.1 of this chapter (relating to Definitions); however, that requirement is not considered discrimination against any individual on the basis of disability.

(b) OIB staff shall ensure the customer or the customer's representative, as appropriate, is notified in an accessible format about the

rights included in subsection (a) of this section, and §853.21 of this chapter (relating to Customer Participation in the Cost of Services), when:

- (1) the customer applies for services;
 - (2) OIB staff determines that a customer is ineligible for services; and
 - (3) OIB staff intends to terminate services.
- (c) Filing a complaint with DRTx:

(1) A customer has the right to appeal a determination to the state's CAP. The CAP in Texas is implemented by DRTx.

(2) DRTx advocates are not employees of the Agency. There are no fees for CAP services, which are provided by advocates and attorneys when necessary. Services are confidential.

(3) A customer who is enrolled in OIB services, or the customer's representative, may file a complaint with DRTx alleging that a requirement of OIB was violated. The complaint does not need to be filed with OIB.

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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